

A. 3 (B)

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2 orders for that weekend, which are 15C3 and the
3 unencumbered securities in the clearance boxes.
4 **Q. Can you tell me what you recall of**
5 **the 15C3 securities you just mentioned?**
6 MR. SHAW: Is this a logical time to
7 take our lunch break?
8 MR. HINE: Yes. Do you want to
9 break for lunch? Okay. Sounds good.
10 (Lunch recess was taken at 12:30.)
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2 (Time noted: 1:14.)
3 A L A S T A I R B L A C K W E L L,
4 resumed as a witness, was examined and
5 testified as follows:
6 CONTINUED EXAMINATION BY
7 MR. HINE:
8 **Q. Good afternoon, Mr. Blackwell.**
9 A. Good afternoon.
10 **Q. Hope you had a good lunch. We have**
11 **some more talking to do here, unfortunately for**
12 **you. I think we had left off with -- we had**
13 **mentioned 15C3.**
14 **Could you just explain to me what**
15 **you were doing over that weekend as far as**
16 **trying to locate assets in 15C3 accounts? And**
17 **I meant the weekend of the 20th, 21st.**
18 A. I wasn't trying to locate assets in
19 15C3.
20 **Q. Okay. What were you trying to do**
21 **with respect to 15C3 accounts?**
22 A. It isn't an account. It's not an
23 account. It's a calculation that historically
24 was run once a week and is designed for
25 customer protection. It's a regulatory
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2 requirement you run this calculation and what I
3 was doing was trying -- working in conjunction
4 with the people that were responsible for
5 producing that, which is the finance
6 organization, was to rerun a calculation.
7 **Q. And why did it need to be rerun?**
8 A. To come up with -- I was asked to
9 come up with what is the number, what is the
10 sum, basically, run the calculation and come up
11 with a number. That is the 15C3 calculation.
12 **Q. Okay. And then what was to be done**
13 **with that calculation once you did it?**
14 A. Provide it to the -- my supervisors
15 and for them to have an understanding of what
16 that number was.
17 **Q. Did you have any understanding of**
18 **how that calculation related to the transaction**
19 **that was going on between Barclays and Lehman?**
20 A. In terms of -- running the
21 calculation was to find out whether -- what the
22 calculation was, come up with a number.
23 **Q. And did you have any understanding**
24 **of what your superiors were going to do with**
25 **that number once you gave it to them?**

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2 A. Compare that to what was locked up
3 as cash to -- cash and securities to protect
4 customers.
5 **Q. And am I correct if that calculation**
6 **yielded a number that was lower than what was**
7 **previously locked up, that would release some**
8 **assets to Barclays; is that right?**
9 MR. SHAW: Objection. Foundation.
10 A. It would mean there is an excess.
11 It would mean there is an excess of cash locked
12 up or securities locked up as part of customer
13 protection.
14 **Q. And why were they trying to find out**
15 **whether there was an excess?**
16 MR. SHAW: Objection. Foundation.
17 A. I was asked to go recalculate the
18 numbers, so I worked with the finance people
19 who own the calculation as a whole, operations
20 are an input to some of the lines in the
21 calculation and we work towards creating that.
22 **Q. And who at finance are charged with**
23 **doing this calculation?**
24 A. At the time, Tony Stucchio, Anthony
25 Stucchio, who reported to Martin Kelly.
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2 (Exhibit 74 B, e-mail dated
3 9-20-2008, marked for identification.)
4 Q. Mr. Blackwell, I am handing you a
5 copy of a document marked as Exhibit 74 B,
6 which is an e-mail stream dated September 20th,
7 2008 involving yourself and several others
8 including Ian Lowitt and some of your people in
9 your group. I think I am mixing two concepts
10 here, so I just want to get some clarification
11 on what we have just been talking about after
12 you have had a chance to look at the e-mail.
13 (Document review.)
14 A. Okay.
15 Q. Have you had a chance to look at it?
16 A. I have.
17 Q. Could you tell me what you recall
18 about this discussion that's embodied in this
19 e-mail?
20 A. It's just a -- it's a list of things
21 that we were working on. It's two things that
22 we were working on. Looking for the
23 unencumbered -- trying to define a list of
24 unencumbered assets, and what it's saying here
25 is that 15C3, if there is excess, and that
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2 A. Again, people closer to the deal
3 were negotiating whatever they were
4 negotiating. I was being asked to carry out an
5 action, I have a goal. Find 1.9 billion of
6 unencumbered assets.
7 Q. I just want to make sure, you were
8 not involved in the setting of that goal or --
9 am I correct to say you don't have any
10 knowledge of why that number was passed down to
11 you?
12 A. I haven't -- no, I don't have
13 knowledge.
14 Q. And now as I read this e-mail, the
15 bottom e-mail is Monty Forrest reporting on
16 some of the efforts to find unencumbered
17 assets; correct?
18 A. Yes.
19 Q. Okay. And as we get to the upper
20 e-mail, Ian says he really needs 1.95 billion;
21 is that right?
22 A. Yes.
23 Q. But I don't understand what he means
24 by a shortfall in the 15C3 lock-up release.
25 Can you explain that?
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2 potentially there is money that can be released
3 as an unencumbered asset of the firm.
4 Q. I think I understand what you said.
5 I just want to make sure.
6 This is during a period of time when
7 your group is trying to locate unencumbered
8 assets which would then presumably be
9 transferred to Barclays for whatever purpose?
10 A. Right.
11 MR. SHAW: Objection. Foundation.
12 Q. And I see here mentioned the goal is
13 1.9 billion. Do you see that?
14 A. Yes.
15 Q. Who set that goal or where did that
16 goal come from?
17 A. Ian is saying guys, we need 1.95
18 billion.
19 Q. Okay. Ian is after the below
20 e-mail; right? The e-mails are from the bottom
21 up in sequence?
22 A. Yes. It would have come from Ian or
23 Paolo.
24 Q. Do you recall any discussions about
25 why we need 1.9 billion in unencumbered assets?
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2 A. I don't know exactly -- the way I
3 would interpret this would be if he is looking
4 for -- if the target is to find 1.95 billion of
5 unencumbered securities, then -- if there is no
6 excess in the 15C3 or there is an excess, we
7 don't know at this point, because we haven't
8 rerun the calculation, then potentially finding
9 more unencumbered assets because you wouldn't
10 take -- if it is not an excess, you can't take
11 it, so it's a sum.
12 Q. Is it correct to say he is asking
13 for a little more in the assets in case there
14 was no excess in 15C3, but actually there was a
15 shortfall --
16 MR. SHAW: Objection. Foundation.
17 Q. -- in 15C3? Is that right?
18 A. No, I wouldn't interpret it like
19 that. I think he is saying find -- review --
20 we are not looking for assets that aren't
21 there. We are going through a process in a
22 very methodical way based on a set of -- an
23 understood approach which are under the rules
24 that we would apply to our depos, to the boxes
25 of Lehman Brothers, to find unencumbered
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2 securities based on those rules to come up with
3 a list. The data that we had, because Chase
4 had failed to send files for a period of time,
5 was incredibly difficult to work with.
6 Broker/dealer systems aren't run -- aren't used
7 to running over a weekend, they work on a
8 five-day week normally, so trying to create
9 this data was difficult. So we are combing
10 through the data to create a list of
11 unencumbered assets. We are recalculating the
12 15C3 to see what the segregation -- what the
13 lock-up requirement would be, on a hypothesis
14 that as customer assets had left Lehman
15 Brothers, then the requirement for a lock-up
16 would be reduced, so that would create an
17 unencumbered asset. So we weren't looking for
18 things that weren't there. We were looking for
19 things that were there based on the
20 challenge -- very challenged and uncertain data
21 that we had.
22 **Q. I think I understood what you just**
23 **said, but did you mean that over the previous**
24 **week presumably customers had left Lehman and**
25 **that would reduce the requirement for the 15C3**
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2 world -- a third-party check of your depos
3 versus the outside world, so your custody
4 information. We had partial information around
5 repo coming back in and we had no visibility
6 over our depo at Chase, because they had
7 removed access to their systems, so we couldn't
8 operate in the normal course of business.
9 **Q. Depo means deposit?**
10 A. Depo means like a clearing box. I
11 would use that term interchangeably.
12 **Q. And why had Chase cut off this data**
13 **stream?**
14 A. As a result of the funding activity
15 that is taking place. I believe -- and this
16 is -- I didn't have a conversation with Chase,
17 but they rescinded access. I passed that
18 information on to Paolo and asked him to speak
19 to Chase, because -- he in the end called Chase
20 and they still would not give us access to the
21 systems.
22 **Q. Did they ever restore access to the**
23 **system?**
24 A. Not that I'm aware of.
25 **Q. Were you party to any of those**
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2 **lock-up or reserve?**
3 A. That was a hypothesis.
4 **Q. And you were doing the calculation**
5 **to test that hypothesis?**
6 A. Yes.
7 **Q. Did it prove to be correct?**
8 A. I don't know what conclusion we
9 ultimately reached, because the data was so
10 challenging we didn't reach a conclusion that
11 weekend.
12 **Q. So do you know if there was an**
13 **excess in the end?**
14 A. I don't. I don't recall whether
15 there was an excess or not.
16 **Q. When you say the data was so -- what**
17 **data are you talking about?**
18 A. Stock record data. Books and
19 records of the firm are dependent on several
20 data feeds; trade data -- new trade data that
21 comes from the front office, external trade
22 data, so repo, for instance, coming from Chase,
23 these are all of the trades -- securities we
24 have pledged, I need that data, that needs to
25 be fed in, and then you carry out third
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2 **conversations between Lehman and Chase about**
3 **this issue?**
4 A. No, I was not.
5 **Q. Do you have any understanding of why**
6 **they were restricting access to the system?**
7 A. I believe it's a dispute that they
8 had with Barclays around the financing trades
9 that were put on at that point.
10 **Q. Do you have any more detail in your**
11 **understanding than that?**
12 A. Just around -- just that.
13 (Exhibit 75 B, e-mail dated
14 9-20-2008, marked for identification.)
15 **Q. Mr. Blackwell, I am handing you a**
16 **document marked as Exhibit 75 B, which is a**
17 **similar e-mail stream to the one you previously**
18 **just looked at marked as sent on September**
19 **20th, 2008. It appears to me to be the same**
20 **e-mail stream, only the last entry is a little**
21 **different than previously. So my question has**
22 **to do with the first entry on page 1 after you**
23 **have had a chance to look at it.**
24 (Document review.)
25 A. Okay.
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2 **Q. Have you had a chance to look at it?**

3 A. I have.

4 **Q. In the first paragraph of this**
5 **e-mail it's mentioning an 8:00 call and it**
6 **appears to relay certain groups of assets and**
7 **eventually there is a line that says the total**
8 **is 2.181 billion. Do you see that?**

9 A. I do.

10 **Q. Are these the assets that your group**
11 **identified as unencumbered assets?**

12 MR. SHAW: Objection. Vague as to
13 time.

14 **Q. Do you have an understanding of what**
15 **this list of assets is?**

16 A. I understand what is trying to be
17 shown here, yes.

18 **Q. Could you tell me what it is?**

19 A. The team of people, so finance,
20 operations working through the process I
21 described to identify assets on the books and
22 records that were highlighted as inventory,
23 unencumbered inventory, this is the breakdown
24 by clearance boxes.

25 **Q. I think previously you testified**

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2 **that there was about \$2 billion in assets that**
3 **you ultimately identified.**

4 A. Which is consistent.

5 **Q. My question for you is do you**
6 **believe this is pretty close to the end result**
7 **of your effort to find unencumbered assets?**

8 A. This was a point in time. That work
9 continued. I can't emphasize enough how
10 challenging the system environments were.
11 Getting information was happening. We had
12 technology teams working through the night to
13 extract data from the systems in a non-standard
14 environment. This is not what we are designed
15 to do and when they were designed to do them,
16 and we weren't getting the third-party feeds we
17 needed to to give us the hundred percent
18 confidence on the data that we had. So there
19 is uncertainty here. So at that point in time
20 there was a call -- I'm not sure that I was
21 actually on that call. I think I was tied up
22 on another issue. But this was the result of
23 that night's work, the overnight work that was
24 done by the technology and operations and
25 finance to come up with that list.

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2 **Q. Okay. Do you know when that process**
3 **came to a conclusion?**

4 MR. SHAW: Objection. Assumes facts
5 not in evidence. Foundation.

6 MR. HINE: You can answer.

7 A. It continued. It continued. My
8 team continued working on this to try and
9 identify the unencumbered assets into the early
10 part of the following week.

11 **Q. So even after the closing it**
12 **continued?**

13 A. We didn't have access to data and
14 then we had virtually no access then, so it
15 just stopped. The work stopped.

16 **Q. When did it stop?**

17 A. I don't know precisely.

18 **Q. If you look at this list, there is**
19 **four different classes of assets.**

20 **Do you recall any other classes of**
21 **assets that were identified as being**
22 **unencumbered other than the four listed here?**

23 A. No. These were the main buckets. I
24 described these earlier as well.

25 **Q. Now, when it says "mortgages," do**

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2 **you see that on number 4? Do you recall any**
3 **discussions or -- any discussions over that**
4 **weekend about Barclays getting a greater**
5 **percentage of the mortgage-based assets than**
6 **was previously agreed to?**

7 A. No.

8 **Q. Is the term resi's used to describe**
9 **this type of asset, mortgage-based asset?**

10 A. Possibly. Without seeing the list
11 of securities, I would be speculating.

12 **Q. Am I correct to say that you were**
13 **not -- would have no knowledge of discussions**
14 **between Barclays and Lehman as to the**
15 **disposition of residential mortgage-based**
16 **assets?**

17 A. That's correct. I think there is
18 one point worth mentioning here. You can see
19 even here that Chase are taking assets, again,
20 so we don't know exactly what's in the real
21 world box. That's really showing you the
22 uncertainty of the data.

23 **Q. And you are pointing to something.**
24 **Can you just tell me which line you are**
25 **pointing to?**

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2 A. It's the second to last paragraph or
3 sentence in the "we are also looking" --
4 **Q. "To value how much JP Chase put a**
5 **lien on Friday by CUSIP"?**
6 A. Yes. We couldn't.
7 **Q. Just so I understand, you are trying**
8 **to figure out what assets Chase is holding in**
9 **the system and not releasing?**
10 A. What Chase has seized.
11 **Q. And did you ever figure the amount?**
12 A. That work, I believe, is still
13 ongoing in terms of what was being done.
14 (Exhibit 76 B, e-mail dated
15 September 21, 2008, Bates stamped 138124,
16 marked for identification.)
17 **Q. Mr. Blackwell, I am handing you a**
18 **copy of an exhibit marked as 76 B, which is an**
19 **e-mail dated September 21st, Sunday, from**
20 **yourself to Ian Lowitt, a copy to some others.**
21 **Take a minute to look at it, if you would.**
22 **(Document review.)**
23 **Q. Have you had a chance to look at it?**
24 A. I have, yes.
25 **Q. Do you recall what this e-mail is**
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1 **Blackwell - Highly Confidential**
2 **about or could you explain to me what it's**
3 **about?**
4 A. I can. This is in relation to
5 fails. What I had been asked to do was
6 determine what the fails were, and as I
7 previously stated around the quality of data,
8 the Lehman systems at that time hadn't consumed
9 the data from the third parties. The
10 third-party sources, in regular course of
11 business that you would have expected, would
12 give you a completely 100 percent accurate
13 statement of your real world positions. What I
14 was suggesting we could make available to
15 Barclays is give Barclays access to DTC -- give
16 DTC, the Depository Trust Company, authority to
17 allow Barclays to look at the depositions so that it
18 could see the fails for themselves, which would
19 be maybe an even more accurate reflection than
20 our books at that time, but that's on Sunday in
21 the night, I think, so I am just trying to help
22 solve the problem around the clearance box.
23 **Q. And was your suggestion acted on?**
24 A. I think it was after the event -- I
25 think -- at some point -- I don't think
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1 **Blackwell - Highly Confidential**
2 actually as it relates to DTC that happened,
3 actually. I don't think that ever happened.
4 **Q. I think previously you discussed**
5 **fails, you said you thought it had been put to**
6 **bed and then it came back for you on Sunday.**
7 A. This is it coming back.
8 **Q. And do you recall your**
9 **conversations -- or did you have a conversation**
10 **with Bart McDade about this issue at this time?**
11 A. Not then. It was third party.
12 **Q. So you don't know if, in fact,**
13 **Barclays was granted access to the DTC so they**
14 **could look at the fails themselves?**
15 A. I don't know. I don't know. That
16 was only a suggestion.
17 **Q. Would someone else in your**
18 **department know that?**
19 A. Unlikely.
20 **Q. Would someone else at Lehman know**
21 **that?**
22 A. If it was granted, it would be in my
23 e-mail, because I probably would have had to
24 grant it.
25 (Exhibit 77 B, e-mail dated
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1 **Blackwell - Highly Confidential**
2 September 21, 2008, Bates stamped 459680,
3 marked for identification.)
4 **Q. Mr. Blackwell, I am handing you a**
5 **copy of Exhibit 77 B, which is an e-mail dated**
6 **September 21st, 2008 on which you are one of**
7 **the recipients and the subject of the e-mail is**
8 **17.9 billion, 9:15 p.m. update.**
9 **(Document review.)**
10 **Q. Have you had a chance to look at the**
11 **document?**
12 A. I have, yes.
13 **Q. My question really has to do with if**
14 **you see on the first line, it says: "Monty,**
15 **you and Alastair need to be at that 7 a.m.**
16 **meeting."**
17 **My question is do you recall having**
18 **a meeting 7 a.m. on Monday morning?**
19 A. Is it Monday or Sunday?
20 **Q. That's what I am trying to figure**
21 **out.**
22 A. No, I don't think it was a Monday
23 morning meeting.
24 **Q. It was a Sunday meeting?**
25 A. What time is that? I can't tell
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1 Blackwell - Highly Confidential
2 from here. Is it a 7 p.m. or 7 a.m. meeting?
3 It's a 7 a.m. meeting. I possibly was, but I
4 don't recall the meeting. Yeah, I don't recall
5 that meeting specifically. It would probably
6 be in my diary if I was there. I don't know.
7 **Q. I think I might have misled you as**
8 **to the day. If you read this correctly, this**
9 **is sent at Sunday, 2 a.m., Greenwich meantime,**
10 **so that would be Saturday night here, correct,**
11 **so that the suggestion, as I read this, would**
12 **mean that it's suggesting a Sunday morning**
13 **meeting; do you recall?**
14 A. That makes more sense, yes.
15 **Q. Does that ring a bell then about a**
16 **meeting?**
17 A. There was a meeting. I don't think
18 I was in that meeting. Monty took -- was in
19 that meeting, if there was one. I don't know
20 if it actually took place, but effectively this
21 is just a continuation of the process of
22 creating a list, which is -- looking at the
23 list by itself is pretty meaningless. It's a
24 list of CUSIPs with the price next to it.
25 **Q. So you don't recall being at that**
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2 standard calculation. Some of the inputs into
3 that calculation are being produced in a
4 non-standard way to the best of everyone's
5 ability at that point in time. So that is my
6 point. It's not going to be a perfect
7 calculation. I think the last calculation was
8 done on the 17th.
9 **Q. So it's not going to be perfect**
10 **because the inputs are not perfect?**
11 A. Yes. Not because we were changing
12 the way you do the calculation. The
13 calculation was done the same way as it had
14 been done for twenty-odd years.
15 (Exhibit 79 B, e-mail dated
16 9-21-2008, marked for identification.)
17 **Q. Mr. Blackwell, I am handing you a**
18 **copy of Exhibit 79 B, which is an e-mail dated**
19 **September 21st, 2008 from yourself to Ian**
20 **Lowitt.**
21 A. Yes.
22 **Q. Have you had a chance to look at it?**
23 **Can you tell me what you are talking about in**
24 **this e-mail? Because it's entitled "they are**
25 **talking about tri-party fail," so I just want**
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1 **Blackwell - Highly Confidential**
2 **meeting?**
3 A. I don't recall being at that
4 meeting. I certainly was discussing this topic
5 constantly.
6 (Exhibit 78 B, e-mail dated
7 September 21, 2008, Bates stamped 10252597,
8 marked for identification.)
9 **Q. Mr. Blackwell, I am handing you a**
10 **copy of Exhibit 78 B, which is an e-mail dated**
11 **Sunday, September 21st, and the title -- the**
12 **topic is update 15C3-3.**
13 **My question to you has to do with**
14 **the first line where you write: "This won't be**
15 **perfect. Perfect is Tony taking that**
16 **approach."**
17 **My question is what were you talking**
18 **about when you said "this won't be perfect"?**
19 A. The systems and the data were
20 imperfect, so that was my --
21 **Q. So are you referring to the**
22 **calculation of the 15C3 number that we**
23 **previously discussed?**
24 A. I'm referring to the inputs. The
25 calculation should be correct, because it's a
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1 **Blackwell - Highly Confidential**
2 **to see if you recall what this e-mail is**
3 **discussing.**
4 A. Yes. I was in a room at Weil. Ian
5 and Paolo were outside of it and I think from a
6 Lehman perspective Bart, myself, those are the
7 people I remember. There were representatives
8 from the Fed, from Chase, from Barclays, from
9 most of the regulators in the room, and this is
10 where discussions, I think, started around the
11 clearance box. I think Chase made -- this is
12 my recollection, so it may be imperfect. Chase
13 made reference to the fact that there was a
14 repo for 15.8 billion, what was called the HIC
15 loan, so held in custody repo, which was a loan
16 that they wanted to assign to Barclays, which
17 Barclays wouldn't take at that time, because
18 they hadn't authorized the trade, which would
19 appear reasonable. I wasn't the expert on
20 this. And what I was actually doing was trying
21 to get -- and what you will see is an e-mail to
22 Bart from me at this same meeting saying we
23 need Paolo in here and Paolo came into the room
24 and I left, I think, at that point, and so
25 that's what it relates to.
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1 Blackwell - Highly Confidential
2 **Q. So the 15.8 repo that's mentioned in**
3 **your e-mail is the HIC loan that you just**
4 **talked about?**
5 A. Yes.
6 **Q. And "Chase want to liquidate," the**
7 **phrase you use there, that's meant to --**
8 A. I think that meeting is probably
9 documented, because I think Hughes Hubbard were
10 present at the time as well and Weil, so I
11 can -- there is a lot of information around
12 that meeting.
13 **Q. Do you recall anything else about**
14 **that meeting?**
15 A. It was -- yeah, there was -- it was
16 a discussion around the repo transactions,
17 Barclays' and Chase's position at that point.
18 **Q. Okay. Do you recall anything other**
19 **than what you just told us?**
20 A. That was -- I believe that was the
21 main thrust. Rich Ricci at the time also
22 stated that we weren't taking responsibility
23 for the clearance boxes and that's when I think
24 the meeting broke up, pretty much broke up, or
25 was about to break up, but I think I left the
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1 Blackwell - Highly Confidential
2 room.
3 **Q. Do you have any knowledge of how**
4 **this issue was resolved ultimately, if at all?**
5 A. No. Not the 15.8, no.
6 **Q. Did you have any other follow-on**
7 **interaction with this 15.8 issue?**
8 A. No. Just one of the repos that were
9 on.
10 (Exhibit 80 B, e-mail dated
11 September 22, 2008, Bates stamped 464767,
12 marked for identification.)
13 **Q. Mr. Blackwell, I am handing you a**
14 **copy of Exhibit 80 B, which is an e-mail stream**
15 **dated September 22nd, 2008 in which you are**
16 **involved, and after you have had a chance to**
17 **look at it, I have a quick question about it.**
18 (Document review.)
19 A. Okay.
20 **Q. Do you see on the second page where**
21 **it says -- an e-mail from Mr. Scagnelli where**
22 **he says "DTC has a free pledge chill on 636,"**
23 **do you see that?**
24 A. Yes.
25 **Q. Can you explain to me what that**
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2 **means, if you know?**
3 A. I would interpret that as meaning
4 that DTC has locked everyone out of the system,
5 that they are controlling the clearance box at
6 this point. They are not taking direction.
7 **Q. Okay. And that --**
8 A. That means we couldn't do anything.
9 **Q. Okay. And later on I see your**
10 **e-mail which says "we need to get to DTC PDQ."**
11 A. Yes.
12 **Q. Do you recall what -- did you, in**
13 **fact, get to the DTC?**
14 A. Yes. They didn't release anything.
15 DTC -- I don't think I actually spoke to them.
16 I don't believe we were in a position to be
17 able to -- we weren't controlling the box. It
18 was in the hands of the trustee.
19 **Q. Okay. And so was there a meeting**
20 **about this or do you have any knowledge of what**
21 **happened after this?**
22 A. No. We didn't -- we ceased to have
23 any ability to impact the books and records of
24 LBI. That's my recollection. And this was
25 just, again, another part of the data issues
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2 that we were experiencing and probably close to
3 the end.
4 **Q. Can you describe for me what your**
5 **role has been with respect to these assets,**
6 **these unencumbered assets after the closing,**
7 **since you have gone to Barclays?**
8 A. Most of my -- my focus is obviously
9 trying to get management and structure in
10 place, so some -- I have been in some meetings
11 along the way. Jim Hraska has worked probably
12 most closely with Martin Kelly, Robert Azerad
13 in the post -- at Barclays to assist. I'd
14 say -- so it's been limited to the series of
15 meetings as it relates to these two specific
16 issues.
17 **Q. Two issues meaning the unencumbered**
18 **assets and --**
19 A. The 15C3.
20 **Q. And do you have a recollection of**
21 **what's gone on since the closing as to these**
22 **issues or --**
23 A. Again, more on the periphery of what
24 I have done, I have reviewed methodology to
25 ensure that I feel comfortable that the
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1 Blackwell - Highly Confidential
2 approach that someone like Monty or Jim has
3 taken makes sense to me, which it does, and I
4 feel very comfortable with the methodology
5 under the terms of the agreement, so where it's
6 been necessary to have my input, then I have
7 been involved. So I think we have created
8 additional schedules since bankruptcy at
9 Barclays which have been made available, so
10 that's been the extent of my involvement. And
11 the 15C3 calculation is rerun every week by the
12 trustee of LBI.

13 **Q. Previously I mentioned that you have**
14 **been designated as a 30(b)(6) witness for**
15 **select issues in this case by Barclays, so I**
16 **just wanted to take a few minutes to address**
17 **that issue in this deposition, so for this**
18 **portion of the deposition it will be a 30(b)(6)**
19 **deposition.**

20 **Have you ever -- did you review the**
21 **30(b)(6) deposition notice that we provided to**
22 **Barclays?**

23 A. I don't believe I have seen it.

24 MR. SHAW: If you show it to him, he
25 might know it.

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1 Blackwell - Highly Confidential
2 MR. HINE: Let's mark this as an
3 exhibit.

4 (Exhibit 81 B, Debtors' Second Rule
5 30(b)(6) Deposition Notice to Barclays on
6 Issues Relating to the Transfer of Assets,
7 marked for identification.)

8 **Q. Mr. Blackwell, I am handing you a**
9 **copy of Exhibit 81 B, which is a copy of the**
10 **Debtors' Second Rule 30(b)(6) Deposition Notice**
11 **to Barclays on Issues Relating to the Transfer**
12 **of Assets.**

13 **My first question is have you ever**
14 **seen this document before?**

15 A. In my discussions with Jonathan I
16 think I may have seen some portion --

17 MR. SHAW: We are not going to get
18 into the substance of those discussions.

19 **Q. I don't want to ask you about a**
20 **privileged communication you might have had,**
21 **but can you please turn to Schedule A of that**
22 **document.**

23 **As I understand from Barclays, you**
24 **have been designated as a witness as to the**
25 **first two topics listed on that schedule, so**
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1 Blackwell - Highly Confidential
2 **could you just take a minute and just take a**
3 **look at those topics.**

4 **(Document review.)**

5 A. Understood.

6 **Q. Okay. You will see those topics**
7 **relate to Schedules A and B that we have talked**
8 **about previously in the deposition, so I just**
9 **want to spend a little time talking about those**
10 **two schedules.**

11 **Let's look at topic number 1. Were**
12 **you involved in the selection of the securities**
13 **that made their way into Schedule A?**

14 MR. SHAW: Objection to form.

15 **Q. Let me rephrase it.**

16 **Were you involved in the selection**
17 **of the securities that are listed in Schedule A**
18 **to the Clarification Letter?**

19 A. I was involved in the transfer of
20 the Fed assets over to Barclays, so in terms of
21 selecting the assets, the selection was done as
22 I -- was done as I described, which was under
23 the terms of the repo agreement that was in
24 place between Lehman and Barclays at that time,
25 so eligible collateral is a component of that

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1 Blackwell - Highly Confidential
2 agreement and had been in place for some time.
3 So selection is done -- was done -- the assets
4 were put into the Fed repo. We know that there
5 were operational issues that I described in
6 terms of the assets changing because of the
7 settlement that took place at Chase, and then
8 there is also a subset of securities that
9 weren't eligible under the legal terms -- under
10 the commercial terms of the repo agreement
11 Barclays had in place with Lehman, which was
12 standard practice, that's why the Fed had
13 stepped in and provided liquidity to the whole
14 market with the PDCF, so poorer quality
15 collateral was funded by the Fed.

16 So it was clear based on the
17 schedules which securities fell outside of that
18 in terms of their quality. So yes, my team
19 worked with finance with the treasury team to
20 refine that list based on that requirement, and
21 in addition to that there were obviously some
22 substitutions that had to take place to make up
23 value, so my team worked again with finance and
24 the clearance teams to drive that -- to
25 finalize that list, but the list is a

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1 Blackwell - Highly Confidential
2 reflection of what moved.
3 MR. HINE: Okay. Let me go at it a
4 different way here. I have, unfortunately,
5 some hefty exhibits to pass to you.
6 (Exhibit 82 B, e-mail dated
7 September 20, 2008, Bates stamped BCI-CG
8 00035134, marked for identification.)
9 Q. Mr. Blackwell, I am handing you a
10 lengthy exhibit marked as 82 B, which is a
11 list -- it's a document Bates stamped BCI-CG
12 00035134 through 35954. I am not going to ask
13 you about the contents of this entire document,
14 but I would like to direct your attention, if
15 you could take a minute and look at the page --
16 first page after the e-mail cover, the covering
17 e-mail, which is marked with the Bates number
18 35138. Do you see that page?
19 A. Yes.
20 Q. Can you tell me whether -- you will
21 see in this page a little summary of different
22 classes of collateral and their market value.
23 Do you see that?
24 A. I do.
25 Q. Could you tell me whether this is
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1 Blackwell - Highly Confidential
2 the collateral that made its way into
3 Schedule A?
4 A. I would assume that it is, based on
5 the fact I provided the data to Paolo, but it's
6 Paolo's team that would have put this together,
7 so would have interpreted the valuations and
8 the content based on that.
9 Q. Do you know if the value of the
10 securities listed on Schedule A is what's
11 listed here under the column Market Value?
12 A. I don't know. It would be dependent
13 on how -- again, how -- I don't know how Paolo
14 ultimately put this together.
15 Q. And when you say "Paolo," you are
16 talking about Mr. Tonucci?
17 A. Yes.
18 Q. So it's his team that would do the
19 valuation of this schedule?
20 A. It's his team that created the
21 summary. Jim Hraska and my team, Monty
22 Forrest, helped create the data and pushed it
23 up to the treasury team for them to package.
24 Q. Now, did the list of securities that
25 ultimately were listed on Schedule A change
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1 Blackwell - Highly Confidential
2 over time?
3 A. Not that I understand, no.
4 Q. Okay.
5 A. What was at the Fed and what made it
6 to Barclays was different for a very sensible
7 set of reasons as I described, so -- and
8 perfectly legitimate reasons based on the legal
9 contracts that were in place at the time.
10 Q. I understand that, but then at some
11 point the securities that made it to Barclays
12 were listed in Schedule A; correct?
13 A. Right. So then it would be -- there
14 was a reconciliation carried out to the best of
15 our ability to what BONY had received, so that
16 would be part -- that would be what's in
17 Schedule A.
18 Q. What are you reconciling when you
19 did that reconciliation?
20 A. Lehman books and records to a BONY
21 statement. So effectively Barclays to Lehman,
22 what moved.
23 Q. Barclays to Lehman?
24 A. Yes.
25 Q. Once the September 18th repurchase
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1 Blackwell - Highly Confidential
2 agreement was put in place and the securities
3 or assets that were collateral for the Fed
4 moved, some of which I understand didn't make
5 it because of the issues you have talked about
6 with respect to BONY, but once that set of
7 securities made it into the Barclays -- to
8 support the Barclays repo, were there any other
9 further changes to that set of collateral
10 between that time and the time that it was
11 listed on Schedule A?
12 A. Not that I'm aware of. I can't --
13 Paolo would be better placed to describe that,
14 if there had been any change.
15 Q. Mr. Tonucci would know specifically
16 about that?
17 A. Yes.
18 (Exhibit 83 B, e-mail dated
19 September 21, 2008, Bates stamped BCI
20 006647 through BCI 006653, marked for
21 identification.)
22 Q. Mr. Blackwell, I am handing you a
23 copy of Exhibit 83 B, which is a document Bates
24 stamped BCI 006647 through 6653. My first
25 question is if you have ever seen this document
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1 **Blackwell - Highly Confidential**
2 **before.**
3 A. I think I saw it in conversations
4 with Jonathan.
5 **Q. In preparation for this deposition**
6 **you saw it?**
7 A. In preparation, yes. That's the
8 first time I saw it.
9 **Q. Okay. My question is if you look in**
10 **the center of the first page, it says "we**
11 **should book all positions from the Lehman**
12 **financing facility to BCI, approximately 45**
13 **billion securities, see attached file." Do you**
14 **see that?**
15 A. I do.
16 **Q. And the attached file is a list of**
17 **securities; correct?**
18 A. It's not a list of securities. It's
19 types, security types.
20 **Q. My question is do you know why this**
21 **approximately \$45 billion worth of securities**
22 **listed in this file and why that's different**
23 **than the numbers listed on the previous**
24 **exhibit?**
25 A. I don't.
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1 **Blackwell - Highly Confidential**
2 **lengthy spread sheet of some sort.**
3 **My question is if you have ever seen**
4 **this document before.**
5 A. Again, in preparation for this
6 deposition.
7 **Q. My question, similar to last time,**
8 **if you see on the front page it mentions a**
9 **total BONY market value of approximately 45**
10 **million. Do you see that?**
11 A. Yeah, I think that's a typo.
12 **Q. Why do you think that's a typo?**
13 A. This looks like more than
14 \$45 million of securities.
15 **Q. I think I might have misspoke. I**
16 **believe it says 45 billion. Is that right?**
17 A. Like I said, I saw this in
18 preparation.
19 **Q. Am I correct -- well, let me just**
20 **ask the question.**
21 **Could you explain to me the**
22 **difference in valuation between the securities**
23 **listed in this exhibit versus the first**
24 **Exhibit 82 that we just discussed?**
25 A. Is this Schedule A or Schedule B?
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1 **Blackwell - Highly Confidential**
2 **Q. Who would have knowledge of that?**
3 A. Again, Paolo would probably be --
4 Paolo Tonucci would probably be the best person
5 to ask.
6 **Q. Again, I'm not trying to trip you up**
7 **here. I just want to know, you are not the**
8 **person with knowledge as to the value of how I**
9 **would compare 45 billion cited here with the 49**
10 **billion on the previous exhibit; correct?**
11 A. No, I'm not.
12 **Q. And it's probably someone in**
13 **Mr. Tonucci's shop who would be that person?**
14 A. Also somebody within Barclays as
15 well, heritage Barclays.
16 (Exhibit 84 B, e-mail dated
17 September 22, 2008, Bates stamped BCI
18 008149 through BCI 008670, marked for
19 identification.)
20 **Q. Mr. Blackwell, I am handing you a**
21 **copy of Exhibit marked 84 B, which is a**
22 **document with a Bates ranges BCI 008149 -- I**
23 **can't use the Bates ranges, because they appear**
24 **to have disappeared, but the first page is**
25 **marked BCI 008149, and attached to it is a**
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1 **Blackwell - Highly Confidential**
2 **Q. That's my question to you.**
3 A. I don't know.
4 **Q. Is it fair to say that someone in**
5 **Mr. Tonucci's shop is probably the person I**
6 **should ask as to the difference in values as to**
7 **the different schedules?**
8 A. Yes.
9 **Q. If I showed you some more schedules**
10 **like this, would you give me that same answer?**
11 A. You are probably going to get the
12 same answer, yes.
13 MR. HINE: I did want to show you
14 one other massive exhibit, though.
15 (Exhibit 85 B, e-mail dated
16 September 30, 2008, Bates stamped
17 BCI-EX-(S)-00004396 through
18 BCI-EX-(S)-00004675, marked for
19 identification.)
20 **Q. Mr. Blackwell, I am handing you a**
21 **copy of Exhibit 85 B, which is Bates marked**
22 **BCI-EX-(S)-00004396 through 4675. I am not**
23 **going to ask you to look through this entire**
24 **document, Mr. Blackwell, but I would direct**
25 **your attention to the first three or four**
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1 **Blackwell - Highly Confidential**
2 **pages, in particular what's entitled APA Lead**
3 **Sheet, page marked number 1. Do you see that?**
4 A. Yes.
5 **Q. My first question is on the covering**
6 **page this is an e-mail from Mary Korycki to**
7 **yourself. Do you recall getting this e-mail?**
8 A. I don't recall getting the e-mail.
9 **Q. Do you recall receiving this**
10 **document?**
11 A. No, and I would not have printed it
12 off.
13 **Q. Have you ever seen this document**
14 **before?**
15 A. Not that I recall, no, I don't,
16 going to an APA schedules meeting.
17 **Q. Can you refer now to that third page**
18 **I pointed you to which says APA Lead Sheet.**
19 **Have you ever seen a schedule like**
20 **that before?**
21 A. Possibly, but I don't really --
22 quite possibly.
23 **Q. Could you tell me if the -- do you**
24 **see the first part talks about Schedule A?**
25 A. Yes.
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1 **Blackwell - Highly Confidential**
2 **box will put a memo segregation on a position**
3 **if there is a stock break, if there is a record**
4 **break, i.e., if your books and records have a**
5 **difference versus the outside -- the real**
6 **world, as it were. And in addition to that**
7 **memo seg is also put on securities where they**
8 **are customer assets, so they are not**
9 **unencumbered. So this is saying that there**
10 **are -- Schedule B-1 has \$235 million worth of**
11 **security positions which are unencumbered and**
12 **in addition to that there isn't a memo seg in**
13 **the system.**
14 **Q. And were you involved in preparing**
15 **that schedule?**
16 A. I was involved in the methodology
17 and talking through the methodology. My team
18 worked with finance to produce the schedule, so
19 yes.
20 **Q. And so that would be -- would that**
21 **be Mr. Hraska as well?**
22 A. Yes.
23 **Q. And am I correct to say that he**
24 **would supply the lists of securities to**
25 **Mr. Tonucci's team who then arrives at this**
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1 **Blackwell - Highly Confidential**
2 **Q. And it comes to a total transferred**
3 **under repo agreement of \$44 billion. Do you**
4 **see that?**
5 A. I do.
6 **Q. Can you tell me if that's actually**
7 **what is the value of the securities on**
8 **Schedule A?**
9 A. I can't.
10 **Q. Okay. Do you --**
11 A. It should be equal to what's on
12 Schedule A, but I can't tell you definitively.
13 **Q. Is this it something, again, I**
14 **should ask folks in Mr. Tonucci's department?**
15 A. Yes, and Jim Hraska.
16 **Q. If you go further down on that list**
17 **you see two entries entitled Positions Not With**
18 **No Memo Seg. Do you see that?**
19 A. I do.
20 **Q. Can you tell me, do you know what**
21 **that means?**
22 A. I do.
23 **Q. Can you tell me what it means?**
24 A. It's a term that refers to the way
25 that clearing boxes work, so that a clearance
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1 **Blackwell - Highly Confidential**
2 **valuation?**
3 A. Correct, or the valuations in the
4 system.
5 **Q. Positions with memo seg means?**
6 A. So where there was an excess -- I
7 will try and walk you through a real -- take an
8 example. There may have been a memo seg in the
9 system for a hundred thousand shares of IBM.
10 The total position of IBM may have been a
11 million shares, so in this instance the
12 methodology would mean that we extract the
13 hundred thousand shares, you would be left with
14 900,000 shares of IBM as unencumbered
15 securities, which were available. So any
16 customer assets that were segged or any breaks,
17 so, again, it is a conservative approach to --
18 a methodology to identify unencumbered assets.
19 **Q. So can I just to go with your**
20 **hypothetical, you said if there was a million**
21 **shares of IBM, 900,000 were unencumbered, they**
22 **would go into the first entry on this -- they**
23 **would go into Schedule B-1?**
24 A. No, they would go into B-2.
25 **Q. Did I say that backwards?**
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1 **Blackwell - Highly Confidential**

2 A. Do you want me to explain it again?

3 **Q. Yes.**

4 A. Positions not with -- positions, I
5 think, is a typo anyway. Positions with no
6 memo seg. So what no memo seg means, in a
7 scenario where there are a million shares
8 assigned to what would have been probably a 931
9 trading account, i.e., firm inventory, so
10 unencumbered assets, and there is no portion of
11 that position which is being segregated by memo
12 seg applied, then a hundred percent of that
13 position would be applied as available
14 unencumbered security. So that's B-1.

15 B-2 is saying positions with a memo
16 seg, so in the scenario where there are a
17 million shares of IBM, some of which is
18 customer asset, potentially a hundred thousand
19 shares, there is a segregation, so in order to
20 protect the customers, only 900,000 of those
21 securities would be available as firm
22 inventory, again, comparing that versus the
23 firm inventory account only. That's important.
24 It's only the firm inventory accounts that are
25 being looked at. And any excess over and above

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1 **Blackwell - Highly Confidential**

2 the seg is being applied in B-2.

3 **Q. Okay. I understand.**

4 **Now, if we continue down this chart,**
5 **you see 636 on the left-hand side, and can you**
6 **tell me what those securities are?**

7 A. That's going to be unencumbered
8 corporates, I think.

9 **Q. And does your department identify**
10 **them?**

11 A. They would have helped identify
12 those, yes.

13 **Q. Mr. Tonucci's crew would determine**
14 **the value?**

15 A. Probably, or it would be system
16 driven, and it's not -- Paolo Tonucci's team
17 would not necessarily be determining value.
18 It's going to be a third-party source of data
19 in most instances or model driven, so it's an
20 application of pricing data, not generation of
21 valuation.

22 **Q. Okay. I understand that. But**
23 **that's done in his department as opposed to**
24 **you?**

25 A. It would have been in the systems.
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1 **Blackwell - Highly Confidential**

2 **Q. So let's continue down. You see**
3 **Friday, 9-26, transfers. What is that entry**
4 **meant to embody?**

5 A. I think that's additional securities
6 being transferred as part of a repo on Friday
7 morning, securities that hadn't necessarily
8 made it over the previous night.

9 **Q. That's not your effort to identify**
10 **unencumbered securities that we talked about**
11 **earlier?**

12 A. I don't know, actually. I don't
13 want to comment on that. I don't think so.

14 **Q. Okay. So you are not the guy to ask**
15 **on what that entry is about?**

16 A. No.

17 **Q. How about the following entries**
18 **where it says "Monday transfer" and then there**
19 **is one that says "Monday transfers par value,"**
20 **do you see that?**

21 A. Yes, I do. I think talking to Paolo
22 Tonucci or Jim would be more fruitful.

23 **Q. You don't have any knowledge of**
24 **what's that meant to embody?**

25 A. Not exactly, no.

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1 **Blackwell - Highly Confidential**

2 **Q. And where it says "footnote 1,**
3 **includes 14 billion in chilled securities not**
4 **delivered," do you understand what that means?**

5 A. I think that's a reference to the
6 point on the early e-mail where DTC had put a
7 chill on the account, effectively frozen the
8 account -- actually, that's not correct.
9 That's not correct. Chilled securities are
10 securities that I think are going through some
11 corporate event of some sort that are
12 undeliverable at that point, potentially.
13 Again, I may be misspeaking.

14 **Q. You are not the person to ask about**
15 **it?**

16 A. No.

17 (Exhibit 86 B, chart, Bates stamped
18 BCI-EX-00099519 through BCI-EX-00099521,
19 marked for identification.)

20 **Q. Mr. Blackwell, I am handing you a**
21 **copy of an exhibit marked 86 B, which is Bates**
22 **stamped BCI-EX-00099519 through 521.**

23 **My question is have you ever seen**
24 **that document before?**

25 A. No, I don't think I have seen it at

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1 Blackwell - Highly Confidential
2 all.
3 **Q. Would you know if the entries in the**
4 **upper third of the chart relate to Schedule A**
5 **securities?**
6 A. I couldn't say that definitively.
7 **Q. Do you know if the values listed on**
8 **line 14 where it shows PCG value of**
9 **approximately 42.5 billion, do you see that?**
10 A. Yes.
11 **Q. Do you know if that's the value of**
12 **the Schedule A securities?**
13 A. No. I don't know.
14 **Q. Could you look at the top, the**
15 **entries, you see it says "PCG value." Do you**
16 **know what that means?**
17 A. I could speculate. I think maybe
18 that may stand for product control group.
19 **Q. That's a Lehman division?**
20 A. Yes, that's the finance function.
21 If that's the -- if that's what it stands for.
22 **Q. You see the entry to the left of**
23 **that BONY value, do you see that?**
24 A. Bank of New York.
25 **Q. Right. Can you tell me why the**
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1 Blackwell - Highly Confidential
2 **values are different between those two columns?**
3 A. I can't, no.
4 **Q. How about to the right of the PCG,**
5 **do you see an entry that says "MV 922 with bid**
6 **offer," do you see that?**
7 A. I do.
8 **Q. Do you know what that column is**
9 **meant to signify?**
10 A. I don't know how it was created, but
11 the heading seems to suggest it as being
12 updated market data on the Monday.
13 **Q. Were you involved in creating that**
14 **column?**
15 A. I don't think I was.
16 **Q. Could you explain to me the**
17 **difference between that column and the prior**
18 **two?**
19 A. The market value has declined,
20 that's what that is showing, as far as I can
21 tell.
22 **Q. Okay, but can you explain to me how**
23 **the valuations were arrived at to create**
24 **column E?**
25 A. No, I can't.
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1 Blackwell - Highly Confidential
2 (Exhibit 87 B, JPM Chase assets,
3 Bates stamped BCI-EX-00108700, marked for
4 identification.)
5 **Q. Mr. Blackwell, I am handing you a**
6 **copy of Exhibit 87 B, which is a spread sheet**
7 **with Bates stamps BCI-EX-00108700 through --**
8 **the second page is marked 109154.**
9 THE COURT REPORTER: There is only
10 one page.
11 **Q. My question is only on the first**
12 **page, so let me ask you, page 108700, do you**
13 **see that page?**
14 A. I do.
15 **Q. Are you familiar with how this chart**
16 **was derived and prepared?**
17 A. No.
18 **Q. Do you know what JPM Chase assets**
19 **it's referring to?**
20 A. I don't.
21 **Q. Would that be something I should ask**
22 **someone in Mr. Tonucci's group?**
23 A. Yes.
24 (Exhibit 88 B, chart, Bates stamped
25 BCI-EX-00109154 through BCI-EX-00109161,
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2 marked for identification.)
3 **Q. Mr. Blackwell, I am handing you a**
4 **copy of Exhibit 88 B, which is Bates marked**
5 **BCI-EX-00109154 through 161. My questions have**
6 **to do with page 109156.**
7 A. This is a Barclays document. I have
8 never seen an acquisition balance sheet.
9 **Q. Okay. That was my question. Did**
10 **you ever see this before?**
11 A. No.
12 **Q. Do you know -- could you tell me, if**
13 **you look down the left-hand column, whether --**
14 **which of those assets made it to Schedule A**
15 **versus Schedule B?**
16 A. Absolutely no idea.
17 **Q. Could you tell me what the valuation**
18 **adjustment entry on number 12 is, on line 12?**
19 A. No.
20 MR. SHAW: You are ranging a little
21 far afield from the two topics.
22 MR. HINE: I hear you.
23 **Q. These are topics that you have no**
24 **knowledge of; right?**
25 A. No, I don't.
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1 Blackwell - Highly Confidential
2 MR. HINE: Mr. Blackwell, I have no
3 further questions for you. Thank you for
4 your cooperation. And I think some of my
5 colleagues would like to ask you a few
6 questions.
7 MR. SHAW: Can we take five minutes.
8 (Recess was taken from 2:26 to
9 2:32.)
10 EXAMINATION BY
11 MR. OXFORD:
12 Q. Mr. Blackwell, we met earlier off
13 the record. As you know, my name is Neil
14 Oxford. I am with Hughes Hubbard & Reed and we
15 represent the SIPA trustee in this case.
16 I would like to follow up on some of
17 Mr. Hine's questions and your answers thereto.
18 You testified about a set of actions
19 that you took to provide Mr. Lowitt with data.
20 Do you remember testifying about that?
21 A. Yes, I do.
22 Q. And you said that at some point it
23 became clear to you that certain of these
24 components became part of the transaction with
25 Barclays. Do you remember saying that?
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1 Blackwell - Highly Confidential
2 A. I think initially the goal -- there
3 was a target set. Actually, let me correct
4 that. Initially we were working to just
5 determine if there was any unencumbered. Then
6 there was a target set and then it changed
7 again ultimately to be that any of the assets
8 in the clearance box, unencumbered assets in
9 the clearance boxes were -- were potentially
10 included in the deal.
11 Q. Okay. I'd like to break that down.
12 Do you remember when you first had a
13 conversation with Mr. Lowitt about your role in
14 determining the existence or otherwise of
15 unencumbered assets over the weekend of
16 September 20th and 21st?
17 A. I don't know when precisely that
18 took place, no, I don't.
19 Q. Do you know if it was before or
20 after the sale hearing in the bankruptcy court
21 on September 19th?
22 A. So that was on the Friday?
23 Q. That was on Friday.
24 A. No, it would have been -- that would
25 have taken place over the course of the
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1 Blackwell - Highly Confidential
2 MR. SHAW: Objection to form.
3 A. What components were we talking
4 about at the time?
5 Q. I think you answered the question in
6 very general terms, which is why I am following
7 up.
8 A. Can we refresh?
9 Q. Sure. Let's try it this way. At
10 some point you said Mr. Lowitt gave you your
11 marching orders over the weekend of the 21st
12 and 22nd. Do you remember saying that?
13 A. Yes, I do.
14 Q. Can you tell me everything you
15 recall about those marching orders.
16 A. My instructions were to work with
17 the finance team to determine at one point --
18 well, to find out if there was any unencumbered
19 collateral in the boxes and to work with
20 finance to recalculate the 15C3.
21 Q. Did you understand Mr. Lowitt to be
22 asking you and your team to go and find and
23 identify \$1.9 billion of unencumbered
24 collateral in what you called the clearance
25 box?
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2 weekend, so actually Saturday, Sunday. My
3 marching orders of 5:00 on that Friday were to
4 be ready for business on Monday. That was my
5 recollection.
6 MR. SHAW: Let me offer a belated
7 clarification, because, of course, the
8 hearing actually carried through into
9 Saturday morning, so you may want to
10 clarify that as well.
11 MR. OXFORD: That's a good
12 clarification.
13 Q. To the best of your recollection, it
14 is sometime on Saturday morning that Mr. Lowitt
15 had that conversation with you rather than
16 Friday evening?
17 A. I think it was over the course of
18 Saturday, yes, because I think in -- if you
19 look at my e-mail, which I'm sure you have,
20 there is -- the process starts and as that
21 process starts, we are working through as a
22 team, again, how we are going to review -- what
23 available data there is or how to go and get
24 the data, so it's about the process of
25 gathering data to determine what is
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1 Blackwell - Highly Confidential
2 unencumbered.
3 **Q. Did you have a number of**
4 **conversations with Mr. Lowitt over the weekend**
5 **about the subject of the unencumbered assets?**
6 A. I would imagine so, yes.
7 **Q. But is it fair to say they kind of**
8 **blur a little bit into one?**
9 A. It was -- yes. It was -- they did.
10 It's hard to know exactly when and where these
11 conversations took place, but clearly we were
12 using e-mail a lot as well to just ask people
13 to create it.
14 **Q. Were any of your conversations with**
15 **Mr. Lowitt face to face?**
16 A. Some of them would be, yes. Ian was
17 not -- some of them might have been. Fairly
18 infrequently.
19 **Q. Did Mr. Lowitt prefer to communicate**
20 **by e-mail?**
21 A. I just had a very narrow set of
22 actions I was focused on, right, so I think it
23 wasn't a question whether he preferred to
24 communicate or not. I was doing the task that
25 had been sent me and he wanted updates. He
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1 Blackwell - Highly Confidential
2 that was sent me. It wasn't a period of time
3 when we were asking lots of questions about why
4 we were doing it.
5 **Q. Did you come to learn at any time**
6 **that the purpose of you and your team**
7 **identifying unencumbered assets was that they**
8 **be transferred to Barclays?**
9 MR. SHAW: Objection. Asked and
10 answered.
11 A. There was a -- my understanding was
12 at some point later on over the course of the
13 weekend, I actually think it may even have been
14 the Monday that we were talking about
15 transferring these assets, talking with I think
16 the trustee of LBI even at that point.
17 **Q. That was a conversation you had with**
18 **the trustee of LBI?**
19 A. I didn't, no, but people within my
20 organization or people within the former Lehman
21 organization were having those conversations.
22 **Q. Okay. What do you remember about**
23 **that conversation?**
24 A. I don't -- I didn't have it, so I
25 don't recall it.
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2 would send "any update." I think there are
3 lots of e-mails like that, and there were lots
4 of e-mails from me to the various teams that
5 were working on these things saying "any
6 updates."
7 **Q. Understood. Do you remember when**
8 **your first conversation with Mr. Lowitt was**
9 **about this task that he had sent you?**
10 A. No, and it's possible it was Paolo
11 that initiated the work even. Paolo Tonucci
12 may have even initiated the work.
13 **Q. So you may have gotten your marching**
14 **orders indirectly from Mr. Lowitt?**
15 A. That's quite possible.
16 **Q. You said that your task changed over**
17 **time and that your first task was to determine**
18 **whether there was, in fact, any unencumbered**
19 **assets; is that correct?**
20 A. Correct.
21 **Q. Did you have any understanding of**
22 **why it was you had been sent this task?**
23 MR. SHAW: Objection. Asked and
24 answered.
25 A. As I stated earlier, I had a goal
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1 Blackwell - Highly Confidential
2 **Q. You just remember that there was a**
3 **conversation with the trustee?**
4 A. Yes.
5 MR. SHAW: Objection.
6 **Q. About the subject of transferring**
7 **assets?**
8 A. I recall that there were -- there
9 was a dialogue with the trustee.
10 **Q. When you say "the trustee," do you**
11 **mean the trustee directly or the trustee's**
12 **office and his staff?**
13 A. I think it's probably something like
14 Anson Frelinghuysen.
15 **Q. We will put that under staff.**
16 **The second part of your marching**
17 **orders appears to be to ascertain the existence**
18 **or otherwise of any excess in Lehman's 15C3**
19 **account; is that correct?**
20 A. It was to recalculate the 15C3. The
21 moneys and securities that were locked up in
22 association with that were managed by the
23 treasury function, I contributed data into the
24 calculation which finance ran and we ran that
25 calculation.
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2 **Q. And as I understand it, it is**
3 **Mr. Tonucci's team I think you said owns that**
4 **calculation?**
5 A. No, it's not. It's Tony Stucchio
6 who reported to Martin Kelly.
7 **Q. And Mr. Kelly's position at the time**
8 **was?**
9 A. Financial controller.
10 **Q. And that's a separate reporting**
11 **stream from yourself and separate --**
12 A. Reported to Ian.
13 **Q. And separate from Mr. Tonucci?**
14 A. Paolo reported to Ian.
15 **Q. Did anybody tell you at any point,**
16 **Mr. Blackwell, that a certain amount of the**
17 **excess, if any, in the 15C3 fund was to be**
18 **transferred to Barclays?**
19 MR. SHAW: Objection to form. Asked
20 and answered.
21 A. There was a discussion about a
22 mechanism potentially, and I think I had that
23 conversation with Gerard LaRocco, to transfer
24 cash if the SEC, Mike Macchiaroli, signed off
25 that there was, indeed, an excess at a point in
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2 A. Well, the SEC would have to give --
3 it is a bankrupt entity -- or the SEC would
4 need to approve any cash movement out of the C3
5 lock-up.
6 **Q. What's the basis of your knowledge**
7 **about that subject?**
8 A. Just -- what do you mean by the
9 "basis"?
10 **Q. How is it you are able to testify**
11 **about that fact?**
12 A. What fact?
13 **Q. That the SEC would have to approve**
14 **any transfer from a bankrupt entity.**
15 A. Because of the experience that I
16 have had.
17 **Q. That's all I was asking.**
18 **Did you have any conversations with**
19 **the SEC that weekend about the subject of the**
20 **15C3 in particular?**
21 A. Not over that weekend, no. I think
22 I had conversations with -- I had many
23 conversations with the SEC post, but not over
24 that weekend.
25 **Q. The conversations that you have had**
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2 time. Now, that changed. That was a mechanism
3 we looked at and discarded. So that's the only
4 conversation that I had around moving cash.
5 **Q. When did you have that conversation**
6 **with Mr. LaRocco?**
7 A. I don't recall, again, exactly the
8 exact time. It was probably on -- late on
9 Saturday, maybe Sunday, but certainly over that
10 weekend.
11 **Q. Mr. LaRocco was employed by Barclays**
12 **at that time; correct?**
13 A. Correct, but that was more about how
14 do you technically move money over a weekend.
15 **Q. What was the mechanism you discussed**
16 **with Mr. LaRocco?**
17 A. This is an operational process. You
18 can't move money on a weekend, so discussing
19 opening up a bank account at -- I think it was
20 at Wells Fargo. We didn't pursue that any
21 further.
22 **Q. It sounded like you also discussed**
23 **with Mr. LaRocco the need for the SEC to sign**
24 **off on any transfer of 15C3 funds; is that**
25 **accurate?**
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2 **with the SEC subsequent to that weekend, are**
3 **they related to the transfer of funds from**
4 **Lehman's 15C3 account to Barclays?**
5 MR. SHAW: Objection. Form.
6 A. I wouldn't characterize them that
7 way. The -- no, I wouldn't characterize them
8 that way.
9 **Q. How would you characterize them?**
10 A. The conversations I had with the SEC
11 have been around asset transfers, not
12 necessarily related to moneys due from the
13 15C3, although I think I have had one
14 conversation post the LBI bankruptcy with Mike
15 Macchiaroli and some other members of his
16 office where we discussed this and provided --
17 I think we may have -- we had a discussion
18 around the 15C3. That was probably the only
19 direct conversation we have had specifically
20 around the 15C3. Then in relation to other
21 asset transfers, the PIM asset transfer, we
22 have had a plethora of conversations of which
23 the 15C3 is a source of customer protection
24 and, therefore, moneys that you would expect
25 would be released as it relates to the PIM
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2 transfer, so it's slightly tangential.
3 **Q. When did you have this conversation**
4 **with Mr. Macchiaroli?**
5 A. I don't know the exact date. It was
6 probably on the Tuesday -- sometime in the
7 first week.
8 **Q. And when you say "the first week,"**
9 **just so we have a clear record --**
10 A. My first week at Barclays.
11 **Q. Who else was present for that**
12 **conversation with Mr. Macchiaroli?**
13 A. Kendall McLaughlin and Alex Crepeau,
14 I think. I may not be correct.
15 **Q. Who is Kendall McLaughlin?**
16 A. He was responsible for regulatory
17 operations at Lehman Brothers.
18 **Q. Does he work for Barclays now?**
19 A. He does not at present. He did
20 transfer. He subsequently left.
21 **Q. Do you know where he is employed**
22 **now?**
23 A. Citibank.
24 **Q. And Mr. Crepeau you mentioned**
25 **earlier. Was he --**
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2 of --
3 A. I think it's later.
4 **Q. The week of Monday 29th?**
5 A. Or even possibly later.
6 **Q. Possibly afterwards?**
7 A. Yes. So we were talking about the
8 transfer of the loan, the cash in the 15C3 that
9 was related to the margin loans, and that was,
10 I think, the first element of the conversation,
11 and I think the second component of the
12 conversation was as it related to the
13 \$769 million worth of securities, Ginnie Maes
14 held at Chase that potentially were going to be
15 delivered as part of the -- that was one way to
16 satisfy the component of the APA, it would
17 either be securities or some alternative value.
18 **Q. Can you explain to me a little more**
19 **about your conversation that related to the**
20 **first alternative, the first part. You said it**
21 **was cash in the 15C3 account or fund that**
22 **related to the margin. What do you mean by**
23 **that?**
24 A. That's related to PIM. PIM
25 customers take, borrow money against their
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2 A. Kendall's boss.
3 **Q. Did he transfer to Barclays?**
4 A. He did.
5 **Q. And is he still employed by**
6 **Barclays?**
7 A. He is.
8 **Q. Do you know what his position is?**
9 A. He is responsible for regulatory
10 operations. He replaced Kendall. He had
11 previously post bankruptcy been responsible for
12 the LBI TSA, the services provided by Barclays
13 to LBI for operations only.
14 **Q. Do you recall why it is you met with**
15 **Mr. Macchiaroli?**
16 A. Yes. We discussed the potential
17 transfer of -- we wanted to transfer the
18 initial funding of the PIM accounts so -- this
19 is actually -- this meeting is later. This is
20 a week later, actually. Sorry. My
21 recollection is wrong. This is later on, this
22 meeting.
23 **Q. So if we are talking about the**
24 **closing of the deal on Monday, the 22nd, of**
25 **September, you think it's sometime the week**
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2 positions. They can borrow up to 440 percent
3 of value.
4 **Q. And you said the second subject, I**
5 **think probably the subject that I am more**
6 **interested in, is the \$769 million of Ginnie**
7 **Mae securities that you said were potentially**
8 **to be transferred pursuant to the agreement**
9 **with Barclays; correct?**
10 A. 769 value, so that was either going
11 to be satisfied through Ginnie Maes or other
12 alternative value, if there is an excess in the
13 C3, the 769 value.
14 **Q. It sounds like you have an**
15 **understanding now of the deal between Barclays**
16 **and Lehman, is that correct, at least in this**
17 **respect?**
18 A. Yes.
19 **Q. Can you tell me without waiving any**
20 **privilege, of course, and any of my questions**
21 **are not designed to discover information that**
22 **you discussed with your attorneys, but can you**
23 **tell me how it is you came to have that**
24 **understanding of the APA. I ask because your**
25 **answers to Mr. Hine's questions suggested you**
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2 weren't really involved and have no knowledge
3 of the deal and now you are telling me you have
4 some knowledge of the deal.

5 A. This was after the event, after the
6 deal had closed, I believe, and that was where
7 these conversations began, in terms of
8 actioning the content of the deal.

9 **Q. Right. Okay.**

10 A. It doesn't mean I had an
11 understanding of the whole deal.

12 **Q. I understand. I don't think you**
13 **quite answered my question, though, which is**
14 **how is it that you came to have an**
15 **understanding that this was a term of the deal?**

16 MR. SHAW: If you can answer the
17 question without revealing discussions with
18 counsel.

19 A. That is probably the most likely
20 source.

21 **Q. Okay. Let's try it this way. What**
22 **did you and Mr. Macchiaroli discuss in this**
23 **meeting that you testified about that took**
24 **place sometime in the week of September 29th or**
25 **perhaps later?**

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2 A. Asking the SEC to review the
3 calculation and release and authorize --
4 provide their sign-off that the C3 had an
5 excess or otherwise, but have an opinion on the
6 C3 and authorize a sign-off to the trustee of
7 LBI to release the cash related to the margin
8 balances, as I mentioned before, another
9 element of the PIM transfer, and securities
10 from -- securities from JPMorgan Chase.

11 **Q. Was this a meeting that you had**
12 **requested, Mr. Blackwell?**

13 A. I don't recall whether I requested
14 it. It's quite possible I did. The SEC set up
15 an office at 745, so were available.

16 **Q. Where did the meeting take place, at**
17 **the SEC's office at 745?**

18 A. Correct.

19 **Q. And this was Mr. Macchiaroli's**
20 **office?**

21 A. Yes.

22 **Q. Do you have any notes of the**
23 **conversation you had there?**

24 A. I don't believe I do. I could go
25 back to my -- I could go back and try and

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2 review my papers.

3 **Q. Where would they be if you had them?**

4 A. Where would they be? They are most
5 likely going to be in my e-mail and they are
6 also potentially in my boxes of files which I
7 have already reviewed and looked through, so I
8 can do that based on these questions.

9 **Q. Your counsel and I can talk off the**
10 **record about our document requests.**

11 **What was Mr. Macchiaroli's response**
12 **to your request that the SEC review and sign**
13 **off the 15C3 calculation?**

14 A. I don't think he was comfortable
15 doing it, doing that at that point. He wanted
16 to get a better understanding of the books and
17 records at that point. So I think we continued
18 to work with members of the SEC and to try and
19 provide them with a better understanding and
20 the finance team probably led that effort in
21 terms of the overall 15C3.

22 **Q. At the time you asked**
23 **Mr. Macchiaroli to sign off on this**
24 **calculation -- withdrawn. I am going to set**
25 **that up a little better.**

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2 **You testified in response to**
3 **Mr. Hine's questions that you were**
4 **uncomfortable about the accuracy of the C3**
5 **calculation over the weekend of September 20th**
6 **and 21st; correct?**

7 A. To be precise, what I said, I was
8 uncomfortable about some of the inputs into the
9 calculation, not the calculation itself.

10 **Q. I didn't mean to mischaracterize**
11 **your testimony. I didn't mean to suggest that**
12 **somehow the formula wasn't properly applied,**
13 **but it seemed to me that as of Sunday night,**
14 **the 21st, you were not comfortable that the**
15 **calculation, because of the reasons you have**
16 **testified to, you are not comfortable that the**
17 **calculation or the result of the calculation**
18 **was a hundred percent accurate; is that**
19 **correct?**

20 A. That's correct.

21 **Q. And what happened between Sunday the**
22 **21st of September and this meeting with the SEC**
23 **a week or so hence that allowed you to become**
24 **comfortable that the calculation was correct?**

25 A. I wasn't talking about the accuracy

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2 of the calculation. I was talking about the
3 components that we would request from the C3.
4 So the request was there are certain components
5 that are owed to Barclays as under the terms of
6 the APA and, therefore, would you be
7 comfortable signing off based on the value of
8 the moneys that are locked up. So the
9 conversation, as far as I recall it, wasn't
10 about how accurate the calculation was. So if
11 Mike had concerns about the accuracy, then,
12 again, we were working with him to try to
13 provide him with some level of comfort as to
14 how the calculation had been constructed and he
15 wanted to carry out that review.
16 **Q. I am going to try that question**
17 **again, because I'm not sure that you answered**
18 **it.**
19 **You were talking with**
20 **Mr. Macchiaroli about the components you would**
21 **request from the C3. That's what you just**
22 **said?**
23 A. Let me --
24 **Q. Can you explain that a little more.**
25 A. The request related to the
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2 agreement.
3 **Q. Had you become comfortable between**
4 **the night of Sunday the 21st of September and**
5 **the date of your request to the SEC some week**
6 **or so later that the C3 calculation you had**
7 **performed was a hundred percent accurate?**
8 A. I wasn't --
9 MR. SHAW: Objection to form.
10 A. I was not saying that the
11 calculation was a hundred percent accurate. I
12 wasn't making that assertion.
13 **Q. So why did you ask Mr. Macchiaroli**
14 **to authorize the release of this money?**
15 A. Because that was part of the
16 agreement.
17 **Q. What was part of the agreement?**
18 A. That if there was an excess in the
19 calculation, and I'm not the person that is
20 going to determine whether there is an excess
21 or not, I think Mike and the finance team would
22 be the people that would determine whether
23 there was, that if there was an excess,
24 \$769 million worth of Ginnie Mae securities
25 held at Chase were part of the agreement and
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2 calculation itself. There is a component
3 that's associated with margin debits and margin
4 credits, so these margin loans related to PIM
5 customers. I was asking that Mike sign off --
6 the SEC sign off the release of that money from
7 within the 15C3, because it was in the
8 calculation, and I think that component we
9 could highlight very accurately as being
10 correct without any question. So we were
11 asking for that money to be released and that
12 was the main driver of my conversation, I
13 believe, that's what I recall anyway, with
14 Mike. In addition to that I think in the same
15 meeting that I had with Mike I asked if he was
16 able to authorize the release of the securities
17 as well.
18 **Q. When you say "the securities,"**
19 **again, just so we have a clear record, you mean**
20 **the 769 Ginnie Mae securities that were held at**
21 **JPMorgan Chase that are referenced in the**
22 **Clarification Letter?**
23 A. Yes.
24 **Q. Why did you ask him to do that, sir?**
25 A. Because that was part of the
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2 that value should be paid to Barclays.
3 **Q. Were you comfortable at the time of**
4 **your request to Mr. Macchiaroli that there was**
5 **at least \$769 million of excess in the C3**
6 **account at Lehman?**
7 A. Again, I'm not the expert on the C3
8 calculation, so I'm not making -- I'm making a
9 request based on the components that I'm
10 involved in. So not the whole calculation. I
11 don't have -- I would need to look at the
12 schedules that were shown to Mike at the time.
13 But if the schedules had shown an excess, then
14 that would give me a level of comfort.
15 **Q. I don't wish to belabor the point,**
16 **but it seems to me that you have two choices.**
17 **Either you got comfortable that the C3**
18 **calculation was accurate between Sunday night,**
19 **the 21st, and whenever you asked**
20 **Mr. Macchiaroli to release this, or you asked**
21 **him to release it not knowing whether or not**
22 **these calculations showing an excess of 769**
23 **million or more was accurate.**
24 MR. SHAW: Objection to form.
25 A. That's not what I was representing.
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1 Blackwell - Highly Confidential
2 I was discussing with Mike the fact that there
3 are multiple components for 15C3 calculation,
4 multiple components, of which I am not expert
5 at the multiple components. Over the course of
6 the weekend leading -- the 21st, 20th, 21st,
7 the work that was done was to determine the
8 operational components that go into a 15C3
9 calculation which is some of the components
10 that we would -- that operations would provide,
11 and there are many other components that make
12 that up. That calculation then determines how
13 much money is locked up. I don't know at that
14 point in time when that conversation happened
15 how much money was locked up. Mike and the
16 trustee of LBI knew how much money was locked
17 up and what the value of that calculation was.
18 But I would need to look at papers from there
19 to determine whether there was an excess. The
20 request was on the basis that if Mike felt
21 there was an excess, when could we discuss
22 having the \$769 million worth of securities.
23 If there isn't an excess, then I'm not
24 expecting him to release the securities. But
25 then alternative value would need to be found
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1 Blackwell - Highly Confidential
2 **Q. Do you recall ever hearing that**
3 **Lehman's margin or deposits at the OCC or any**
4 **other exchange were ever part of the deal**
5 **between Lehman and Barclays?**
6 A. Over the deal weekend, no.
7 **Q. That answer suggests to me that**
8 **subsequently to the deal weekend you have heard**
9 **that.**
10 A. I understand that to be the deal.
11 **Q. And, again, without wishing to**
12 **invade any privilege that you may have, can you**
13 **tell me how it is you came to learn that piece**
14 **of information?**
15 A. I learned that as part of some
16 conversations that I think took place --
17 meetings that took place between the trustee of
18 LBI, a member of my staff, and Barclays'
19 counsel, so I...
20 **Q. That's fine. It's probably not**
21 **privileged, but I don't need to go into it.**
22 **You said in response to one of**
23 **Mr. Hine's questions that one of your**
24 **responsibilities over the weekend was to**
25 **monitor settlement activity between various**
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1 Blackwell - Highly Confidential
2 away from the C3.
3 **Q. We will come back to the alternative**
4 **value in a little bit.**
5 **Have you had any subsequent**
6 **conversations with the SEC about the subject of**
7 **C3?**
8 A. Yes. Again, as it pertained to the
9 margin debits and the PIM asset transfer,
10 multiple. Too many to list.
11 **Q. Have you had any conversations with**
12 **the SEC about the \$769 million?**
13 A. I don't think I have had any
14 subsequent conversations.
15 **Q. Do you know if anybody else at**
16 **Barclays has had conversations with the SEC**
17 **about the release of 769 from the 15C3 account?**
18 A. I don't know is the -- I don't know.
19 **Q. Were you ever asked over the**
20 **weekend, sir, the weekend of September 20th and**
21 **21st, to do any work as it relates to Lehman's**
22 **margin or deposits at the OCC or any other**
23 **exchange?**
24 A. I don't recall doing any work on
25 that.
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1 Blackwell - Highly Confidential
2 **clearing organizations.**
3 A. Not over the weekend, because there
4 is no settlement can take place over the
5 weekend.
6 **Q. I'm sorry. I misspoke.**
7 **Was monitoring settlement activity**
8 **in various clearing organizations part of your**
9 **responsibility in the week preceding the LBI**
10 **bankruptcy on the 19th of September?**
11 A. Correct.
12 **Q. Can you tell me a little more about**
13 **your role in monitoring the settlement**
14 **activity, please.**
15 A. My settlement teams were obviously
16 working very closely with these exchanges to
17 try and clear the business and working with the
18 treasury team to fund -- to make sure the boxes
19 were funded as much as they possibly could, and
20 over the course of that week funding obviously
21 started to disappear, so settlement started to
22 wind down. The most notable event apart from
23 Chase not providing clearance on the Friday
24 before bankruptcy was DTC raising the debit cap
25 to zero, which basically prevented us from
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1 Blackwell - Highly Confidential
2 being able to settle transactions.
3 **Q. What does that mean, raising the**
4 **debit cap to zero?**
5 A. It means that the account is
6 effectively not funded, so the process of
7 settlement can't take place.
8 **Q. I have heard that over the week**
9 **prior to LBI's bankruptcy that DTC was**
10 **threatening not to clear trades.**
11 Is that the same thing that you have
12 just told me in slightly different language?
13 A. Yes.
14 **Q. Do you have an understanding of why**
15 **DTC was threatening not to clear trades?**
16 A. Because the account -- because of
17 funding, funding the account, cash being made
18 available to fund the account. The treasury
19 organization would fund all the clearing
20 systems. If they had insufficient cash to fund
21 or insufficient cash to fund a clearing
22 mechanism, then the mechanism doesn't work.
23 **Q. Did you have any conversations with**
24 **anybody at DTC about the funding issues you**
25 **just described?**

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1 **Blackwell - Highly Confidential**
2 A. I was informed by Neal Ullman, who
3 had a direct call with DTC, I had a
4 conversation, I think it was an e-mail
5 conversation and then ultimately a conversation
6 directly with Ian when we became aware of the
7 situation. I asked Paolo as well if he could
8 fund the account. So that was -- and asked him
9 to -- I think there is an e-mail me asking for
10 \$1.2 billion to be put into the clearance box.
11 **Q. What was Mr. Tonucci's response to**
12 **your request?**
13 A. I don't remember one.
14 **Q. You took that as a no?**
15 A. I, yeah, moved on.
16 **Q. At any point did you have an**
17 **understanding, Mr. Blackwell, of the terms of**
18 **the deal between Lehman and Barclays as to**
19 **Lehman's DTC box?**
20 A. I think I have discussed this in
21 some of my earlier answers. I was under the
22 working assumption that there would be a
23 conversion of, I think, the 074 box, the DTC
24 box. That was not accurate. There was
25 definitely dialogue between the regulators,
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1 Blackwell - Highly Confidential
2 which I wasn't in, but I'm aware of, between
3 the regulators, DTC and Barclays and Lehman as
4 to Barclays taking responsibility. I think
5 Barclays was very clear that we not take
6 responsibility for the liabilities of the
7 boxes.
8 **Q. You testified earlier that you had**
9 **made a suggestion that Barclays go and look at**
10 **Lehman's DTC books. Do you remember that?**
11 A. I do.
12 **Q. For what purpose were you making**
13 **that suggestion?**
14 MR. SHAW: Asked and answered.
15 A. So that it was possible to
16 understand any settlement risk.
17 **Q. Was that suggestion made at a time**
18 **when Barclays was considering stepping into**
19 **Lehman's shoes at DTC?**
20 MR. SHAW: Objection. Foundation.
21 A. I don't know what the -- I don't
22 know.
23 **Q. Well, let me ask it this way: The**
24 **conversion plan about which you have testified,**
25 **you said that as of, I believe, Friday**

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1 **Blackwell - Highly Confidential**
2 **afternoon, maybe around 5:00, you said the**
3 **conversion plan was no longer going to be**
4 **affected; is that correct?**
5 A. Correct.
6 **Q. Did you understand at any point**
7 **after 5:00 on Friday Barclays was still**
8 **assessing the risk in Lehman's DTC box?**
9 A. Not at that point. That issue
10 didn't come up until Sunday.
11 **Q. Do you have any understanding as to**
12 **why the issue arose on Sunday?**
13 A. I believe it's because the
14 regulators and other entities that were
15 involved in signing off on the deal were
16 insisting that the box should be -- Barclays
17 should take responsibility for the box, which
18 they did not want to do.
19 **Q. Where did you get that**
20 **understanding, that the regulators wanted**
21 **Barclays to take over the box?**
22 A. I would have heard it either from
23 Ian or from -- maybe even from Alex Crepeau.
24 **Q. Does that answer exhaust your**
25 **recollection of the regulators' interactions**
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with Barclays on this issue?

A. I was not part of them, so yes, it does.

Q. Do you understand that Barclays -- withdrawn.

Did Barclays decide to take over the box in whole or did they decide to just take the assets rather than the liabilities?

MR. SHAW: Objection. Foundation.

A. My understanding is that Barclays agreed to take unencumbered assets. This is a post-event recollection. Agreed to take unencumbered assets and not take responsibility for clearance boxes of Lehman Brothers.

Q. Do you have any understanding as to the reasons that decision was made?

A. No.

Q. You never talked to anybody about it?

A. It's possible, but, again, we were moving on to a building mode at Barclays.

MR. OXFORD: I'd like to show you a few documents, please.

(Exhibit 89 B, e-mail dated

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9-19-2008, marked for identification.)

Q. Mr. Blackwell, you have in front of you a document I have marked as Exhibit 89 B. Can you read that and let me know when you have had a chance to look over it.

(Document review.)

A. Okay.

Q. You will see in the e-mail that's ultimately forwarded to you, the bottom e-mail in the chain is an e-mail from Chris Concannon at NASDAQ to Gerald Donini. Do you see that?

A. I do.

Q. Who is Mr. Donini?

A. Gerry Donini is -- or was head of equities at Lehman Brothers.

Q. Where is Mr. Donini now?

A. He is at Barclays Capital. Holds the same position.

Q. You see the last line of the first paragraph, the last sentence of the first paragraph says: "DTC is contemplating a cease act notice for LEHM tonight." Do you see that?

A. I do.

Q. That e-mail chain is ultimately
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forwarded to you and to Mr. Joseph Lodato by Gerald Donini. Do you see that?

A. I do.

Q. Mr. Donini writes to you and Mr. Lodato "need an answer and help."

A. I think Gerry probably answered that. Gerry was responsible for compliance for the equity division. At that point I had no understanding of what Barclays' intent was around the boxes other than to assume they were taking responsibility for them at that point.

Q. Why was it you assumed they were taking responsibility for it? Is that because you were still in your conversion mindset, as it were?

A. Yes. So I don't think I confirmed or denied -- I don't think I responded to this.

Q. You don't recall speaking to Mr. Donini or Mr. Lodato about this?

A. It's possible I did, but, again, in light of the number of things going on, it was possible that I didn't follow through on that particular item.

MR. OXFORD: Okay. That's all I

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have for that document.

(Exhibit 90 B, e-mail dated 9-19-2008, marked for identification.)

Q. Mr. Blackwell, you have in front of you Exhibit 90 B. I should say, just so we are clear, there is a somewhat complicating factor when these e-mails were processed in the timing, so the first line of the "sent," which is up here as 2:53 p.m., is actually in Greenwich meantime, so that is an e-mail that was sent at 10:53 a.m. on Friday.

A. 10:53 --

Q. A.M. on Friday, but the e-mails below the chain -- sorry, in the chain, are in Eastern standard time.

A. Okay. So this is the morning of Friday.

Q. Friday morning.

A. We are still in conversion mode.

Q. Still in conversion mode.

Mr. Nicholson writes to you and Mr. Lodato again asking for guidelines as to what is going presumably to Barclays. Correct? That's how you read it?

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1 **Blackwell - Highly Confidential**
2 A. I would read it that way, yes.
3 **Q. And you reply "currently being**
4 **argued, they are taking all the DTC 074 box."**
5 A. And, again, that was an assumption
6 at that point in time that the box was going.
7 (Exhibit 91 B, e-mail dated
8 9-21-2008, marked for identification.)
9 **Q. Mr. Blackwell, you have in front of**
10 **you what I have marked as Exhibit 91 B, which**
11 **at the top is an e-mail that's sent by you on**
12 **Sunday, the 21st of September, at 2:43 a.m.,**
13 **that's what it bears, but it would have been**
14 **sent at Saturday, 10:43 p.m. on the 20th.**
15 A. Okay.
16 **Q. I say this as much for your benefit**
17 **as to try to keep myself --**
18 A. I was definitely --
19 **Q. Below you write an e-mail at**
20 **10:38 p.m. to Mr. McDade and to Mr. Lowitt**
21 **saying "DTC suggestion."**
22 **Does this reflect a suggestion by**
23 **you that Barclays review the Lehman assets at**
24 **DTC?**
25 A. Yes, it does. To give -- it's to
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1 **Blackwell - Highly Confidential**
2 **of Lehman's DTC box, what did TBAs mean to you?**
3 **They are not on this document.**
4 A. I wasn't in -- I don't -- I don't
5 know. It's a type of security.
6 **Q. Was it a type of security that was**
7 **in Lehman's DTC box?**
8 A. It's quite possible.
9 **Q. Was it a type of security that you**
10 **had any understanding Barclays was concerned**
11 **about?**
12 A. I don't know.
13 **Q. Is it a type of security that comes**
14 **with any potential liabilities?**
15 A. I think any security comes with a
16 sort of liability. They go up and down, so any
17 security has liability.
18 (Exhibit 92 B, e-mail dated
19 9-20-2008, marked for identification.)
20 **Q. I've marked as Exhibit 92 B what I**
21 **think is a double-sided document. It's a**
22 **two-page document that is ultimately**
23 **forwarded -- sorry -- that is ultimately sent**
24 **by you on Saturday at 7:14 p.m. Eastern.**
25 **Subject, 1.4 billion update. If I can direct**
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1 **Blackwell - Highly Confidential**
2 give -- I think we discussed this earlier.
3 This is to give Barclays access to the DTC
4 clearance boxes either to review unencumbered
5 assets or fails. I don't know what topic I am
6 referring to. Probably on the Saturday it's
7 referring to unencumbered.
8 **Q. Sorry, can you explain that last**
9 **answer.**
10 MR. SHAW: You are going to need to
11 ask a more precise question.
12 **Q. You said "either to review**
13 **unencumbered assets or fails." What do you**
14 **mean by reviewing unencumbered assets?**
15 A. What do I mean by reviewing
16 unencumbered assets? That's probably not
17 accurate. I am just thinking in terms of the
18 timeline of when this was sent and what I was
19 focused on. So I think the primary purpose of
20 this effort was to allow Barclays to review the
21 failing transactions. I do think that was the
22 primary purpose, but I can't be a hundred
23 percent sure. I'm sure there are more e-mails
24 associated with this.
25 **Q. In the context of Barclays' review**
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1 **Blackwell - Highly Confidential**
2 **your attention to the original e-mail in the**
3 **chain, which is on the reverse of your exhibit,**
4 **there is an e-mail that is not sent to you at**
5 **this stage, but it's forwarded up to you. It's**
6 **from Mr. Lowitt to Mr. McDade and**
7 **Mr. Berkenfeld on Saturday, September 20 at**
8 **5:53 a.m.**
9 **Mr. Lowitt writes: "Did the court**
10 **accept the 15C3 lock-up and unencumbered box**
11 **make it through to Barcap."**
12 **Do you remember, when you received**
13 **this e-mail, scrolling down and reading this**
14 **part of the chain?**
15 A. Probably not. Just the sheer volume
16 of mail I'm getting, my goals are here, the
17 e-mail from Monty, which I think we have
18 actually looked at several times in other
19 exhibits.
20 **Q. If you go two up the chain, Beth**
21 **Rudofker sends an e-mail to Mr. Berkenfeld and**
22 **copies you amongst others.**
23 A. Yes.
24 **Q. Is that the point at which you would**
25 **become focused on this e-mail?**
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A. Quite possibly, but again, the focus of this e-mail on this e-mail trail and the focus of what I am doing as the operations manager is trying to identify based on the set of criteria unencumbered securities. I don't know what was discussed in court. I have no idea. And it was, frankly, of little interest to me at that point.

Q. Miss Rudofker writes: "Alastair" -- and she spells your name wrong -- "and Neal are working on getting it ring-fenced/moved if needed."

Was that your understanding of what your marching orders were that weekend, to get the 15C3 assets and the unencumbered box ring-fenced and moved, if needed?

A. I couldn't technically do that. I could identify assets. I can't move anything over the weekend. I couldn't move cash at the weekend and I couldn't move securities related to it, so practically that's not possible, so my marching orders, as I said, was to identify the assets and provide that information, what are the assets that are currently unencumbered,

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and recalculate the C3.

Q. Did anyone ever tell you that cash had been removed from the deal between Lehman and Barclays?

A. That was my understanding of why 769 cash couldn't move, it had to be securities, but I think that was a post -- that was a post-weekend event. That's my recollection.

Q. Your recollection -- and the event you are talking about is you learning that the reason the transfer is 769, not some number in cash, is because, as you understood it, the terms of the deal was that no cash could go to Barclays?

A. That was after the weekend, as I thought 769 was a strange number.

Q. Okay. I think you have answered my question as to timing, but not actually my question.

Is it correct that your understanding was that the reason the deal between Barclays and Lehman was the transfer of \$769 million in Ginnie Mae securities rather than that number or some other number in cash

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was because cash had been excluded from the deal with Barclays?

A. I don't think -- I don't think I would have known that. I think I may have learned that subsequently. Around the time my understanding would have been securities needed to move or alternative value.

Q. From whom did you gain that understanding, sir?

A. It's going to have been from a similar set of people you see in my e-mails. It's going to be Ian, Martin or Paolo who would have informed me of that.

Q. So one of the three, to the best of your recollection, you can't remember which, would have told you that the reason the deal changed from I think it was a billion dollars -- does that sound right to you?

MR. SHAW: Objection. Foundation.

Q. I think there is probably a number of proper objections to that question.

Did you ever have an understanding that some other value different to \$769 million was to be transferred from Lehman's C3 account

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to Barclays?

A. Over the course of the weekend I had spent time, that conversation I had with Gerard around the billion dollars of cash at Wells Fargo, so I had a conversation about the mechanism to potentially move that. That's where my involvement was.

Q. So based on your conversation with Mr. LaRocco, you had understood that one component of the deal between Barclays and Lehman was to move a billion dollars of cash which was held in that Wells Fargo account which was that 15C3 account?

A. Correct, dependent, though, on determining there was an excess, and there would be alternative value.

Q. And when the deal is finally inked in the Clarification Letter, that number has changed, hasn't it? It's no longer \$1 billion; correct?

A. That is my understanding, yes.

Q. That number has changed from \$1 billion to \$769 million; correct?

A. Correct.

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1 Blackwell - Highly Confidential
2 **Q. And just so we have got a clear**
3 **record, I think we are there, but one more**
4 **question, your understanding of the reason that**
5 **the deal changed from \$1 billion in cash from**
6 **Wells Fargo, assuming there is an excess in the**
7 **C3 account, the reason it changed from that**
8 **\$1 billion to 769 of Ginnie Mae securities was**
9 **a belief that no cash was to go to Barclays**
10 **under this deal?**

11 MR. SHAW: Objection to form.

12 A. I don't have -- over the course of
13 the weekend when the Clarification Letter was
14 being produced, I have no understanding of that
15 at all.

16 **Q. I understand that, sir. That wasn't**
17 **my question.**

18 A. Post the event that is a
19 possibility. It is not something I spent a
20 huge amount of my time discussing.

21 **Q. But you believe the basis of your**
22 **knowledge, such as it is, comes from**
23 **conversations with Mr. Lowitt, Mr. Tonucci and**
24 **Mr. Kelly?**

25 A. Most likely.

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1 Blackwell - Highly Confidential
2 (Exhibit 93 B, Management of the
3 Unencumbered Asset Gap, marked for
4 identification.)

5 (Recess was taken from 3:33 to
6 3:38.)

7 BY MR. OXFORD:

8 **Q. Mr. Blackwell, you have in front of**
9 **you what I have marked as Exhibit 93 B, which**
10 **is a document -- a one-page document**
11 **entitled -- two-page document entitled**
12 **Management of the Unencumbered Asset Gap.**

13 **Do you recall seeing this document**
14 **before?**

15 A. When I was reviewing my e-mail, I
16 think I saw something like this, if not this
17 one.

18 **Q. And when you say reviewing your**
19 **e-mail, do you mean in preparation for this**
20 **deposition?**

21 A. Absolutely.

22 **Q. Did that review refresh your**
23 **recollection about the events that took place**
24 **at the time this document was created?**

25 A. I think this is the -- to the extent

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1 Blackwell - Highly Confidential
2 that it is consistent with the attempt to look
3 for 1.95 billion of collateral. At that point
4 that was a target. I don't know why that
5 target was set, but that was the target. That
6 target subsequently became irrelevant or
7 raised.

8 **Q. When did it become irrelevant or**
9 **raised?**

10 A. It was -- the target ceased to be --
11 over the course of the weekend it ceased to be
12 about finding a specific number. It was what
13 is available unencumbered collateral.

14 **Q. And was that change in emphasis**
15 **something that Mr. Lowitt communicated to you?**

16 A. I believe so, yes.

17 **Q. And again, just so we are clear, the**
18 **idea then was to find as much unencumbered**
19 **collateral as possible so that it could be**
20 **transferred to Barclays?**

21 A. No, that wasn't my understanding.
22 It was to identify unencumbered collateral and
23 determine what value -- determine what was a
24 list of unencumbered securities so that a value
25 could be applied to it. I don't know that the

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1 Blackwell - Highly Confidential
2 intent was to transfer all of it to Barclays.
3 I think the terms of the APA state that the
4 contents of the clearance boxes, i.e., the
5 unencumbered securities in the clearance boxes
6 would be transferred, so I think this is an
7 earlier iteration of that.

8 **Q. When you say the APA, Mr. Blackwell,**
9 **the APA to me means the Asset Purchase**
10 **Agreement that was signed on 16th of September.**
11 **Is that a document you are referring to?**

12 A. I'm not sure which date. Whatever
13 legal agreement was in place. I've seen it
14 subsequently, but my understanding is it was --
15 that was my understanding.

16 **Q. And is it your understanding that**
17 **whatever legal agreement this may be, the APA**
18 **or something else, transfers in terms of**
19 **unencumbered collateral, it transfers what to**
20 **Barclays?**

21 MR. SHAW: Asked and answered.

22 A. The contents of the -- the
23 unencumbered assets in the clearing box.

24 **Q. Clearance box was broader to your**
25 **mind than DTC; correct?**

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1 **Blackwell - Highly Confidential**
2 A. Yes, it would be.
3 **Q. Was it -- I think you testified that**
4 **it included Euroclear?**
5 A. Correct.
6 **Q. It also included Canadian exchanges?**
7 A. Not exchanges.
8 **Q. Sorry. Then I apologize for my**
9 **layman's language. It included certain**
10 **clearance corporations in Canada?**
11 A. Correct.
12 **Q. What else were you -- withdrawn.**
13 **Where else were you looking for**
14 **unencumbered collateral, if anywhere else?**
15 A. We were looking in the clearance
16 depos of LBI, and I don't know all the numbers
17 off the top of my head, but there are a list of
18 depos that would fall under LBI and we would --
19 the teams would have looked in those depos and
20 discounted some of them as not being depos, so
21 the focus is really on, I think, three or four
22 core pools of unencumbered securities.
23 **Q. The document that I have marked as**
24 **93 B says: "The objective is to deliver to BCI**
25 **\$195 billion as unencumbered collateral by COB**
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1 **Blackwell - Highly Confidential**
2 **Q. Can you explain for me what your**
3 **understanding is of a 15C3 account, just to**
4 **make sure we are not passing each other when we**
5 **are talking about it?**
6 MR. SHAW: Objection. Asked and
7 answered, and I think also the problem you
8 are going to run into, again, is the use of
9 15C3 account.
10 MR. OXFORD: You are right. He did
11 correct that earlier.
12 **Q. Do you have an understanding of what**
13 **the requirements are of SEC rule 15C33?**
14 A. I'm at an expert on that rule.
15 **Q. Okay. That's useful. That was my**
16 **next question.**
17 **Do you have a general understanding**
18 **of what the rule requires?**
19 A. I have a general understanding what
20 it requires.
21 **Q. Can you tell me what that general**
22 **understanding is?**
23 A. The purpose of the calculation is to
24 protect customer assets by calculating a figure
25 and that figure is then -- it then requires you
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1 **Blackwell - Highly Confidential**
2 **Friday, September 19th." Do you see that?**
3 A. I do.
4 **Q. I read COB to be short for close of**
5 **business. Do you read that also?**
6 A. I do.
7 **Q. Do you know why this document has as**
8 **its objective the delivery of unencumbered**
9 **collateral by the close of business on Friday,**
10 **September 19th?**
11 A. I actually don't, and I think
12 somebody like Paolo would be better answering
13 this question.
14 **Q. Did you ever have an understanding**
15 **that there was any effort to transfer**
16 **unencumbered collateral to Barclays by close of**
17 **business on Friday, September 19th?**
18 A. Possibly. I don't recall that as a
19 major part of the fact pattern that we were
20 working towards at that time, but that's
21 possible.
22 **Q. Do you recall anything else about an**
23 **effort to transfer collateral to Barclays on**
24 **Friday, the 19th?**
25 A. No.
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1 **Blackwell - Highly Confidential**
2 to deposit either cash or securities, whichever
3 the security types are eligible, into an
4 account for that customer's protection.
5 **Q. And do you have an understanding of**
6 **the various elements of the calculation --**
7 A. No, I don't.
8 **Q. -- that goes into the 15C3**
9 **calculation? You don't know?**
10 A. I don't.
11 **Q. Do you have any understanding of how**
12 **secured loans are treated under 15C3?**
13 A. No.
14 **Q. Do you have any understanding of how**
15 **overdrafts are treated under 15C3?**
16 A. I don't.
17 **Q. Do you have any understanding of how**
18 **margin that is posted at the options clearing**
19 **corporation is treated under 15C3?**
20 A. I don't.
21 (Exhibit 94 B, e-mail dated
22 9-22-2008, marked for identification.)
23 **Q. Okay, Mr. Blackwell, I have put in**
24 **front of you a document marked Exhibit 94 B,**
25 **which is a one-page e-mail that at the bottom**
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1 **Blackwell - Highly Confidential**
2 **is sent to you at 5:22 a.m. on Monday, the 22nd**
3 **of September. Do you see that?**
4 A. I do.
5 **Q. The re line is 15C3, and do you see**
6 **that Mr. Tonucci writes to Chris O'Meara, Ian**
7 **Lowitt, it looks like a Russian version of**
8 **Martin Kelly, I'm not quite sure why, to Robert**
9 **Azerad and copying you? Do you see that?**
10 A. I do.
11 **Q. He says: "The final agreement was**
12 **limited to 769 million, MM, of treasuries, so**
13 **should be more comfortable to accomplish." Do**
14 **you recall receiving that?**
15 A. That is probably when I learned it
16 was a different number.
17 **Q. Just so we are clear, a different**
18 **number, you are referring to your earlier**
19 **testimony about a change in the business terms**
20 **of the deal between Barclays and Lehman from**
21 **\$1 billion of excess to 15C3 -- sorry -- from**
22 **the 15C3 reserve to 769 million of treasuries?**
23 A. When I became aware that it was 769
24 million of treasuries that was included in the
25 agreement. I didn't know that the -- I didn't
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1 **Blackwell - Highly Confidential**
2 **Q. Do you recall receiving this e-mail,**
3 **Mr. Blackwell?**
4 A. No. This isn't something I was
5 focusing on at all.
6 **Q. Can you tell me what you were doing**
7 **at 4:00 on Sunday afternoon of the 21st?**
8 A. 21st is a Sunday?
9 **Q. 21st is a Sunday. The deal closes**
10 **on Monday, the 22nd. Where physically were**
11 **you?**
12 A. I am possibly at Weil's offices at
13 that point. I am possibly at Weil's offices.
14 I can't remember the timing exactly, but I was
15 there for some of the day, so that's quite
16 possible I was there.
17 **Q. And your focus at that time was not**
18 **on OCC. What was it on?**
19 A. The major topics for me that day
20 were, again, the unencumbered collateral and
21 the 15C3 and the fails topic was raised again
22 in the course of that day, so I was in a room
23 away from where the deal was being discussed,
24 but it was somewhere in Weil's offices with
25 people, and questions were being put to me,
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1 **Blackwell - Highly Confidential**
2 know that cash had definitively been included
3 in any agreement.
4 **Q. Did you know that it had**
5 **definitively been excluded from any agreement?**
6 A. All I knew at this point was 769 had
7 been included.
8 **Q. Do you think you had a subsequent**
9 **conversation with Mr. Tonucci, Mr. Lowitt or**
10 **Mr. Kelly about this topic?**
11 A. Quite probably. It's probable that
12 I did. Possible that I did and probably I did.
13 (Exhibit 95, e-mail dated 9-21-2008,
14 marked for identification.)
15 **Q. Okay, Mr. Blackwell, I have marked**
16 **as Exhibit 95 B what is a five-page e-mail**
17 **with, I believe, two attachments entitled**
18 **Forward Net Long Options - 9/18, which is sent**
19 **from Francis Pearn to a distribution list, and**
20 **you are copied, on Sunday, September 21st at**
21 **4:03 Eastern standard time.**
22 **If you could just take a moment to**
23 **review that e-mail and tell me when you have**
24 **had a chance to read it.**
25 A. I've read it.
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1 **Blackwell - Highly Confidential**
2 information was coming back, so I was trying to
3 carry out the task that I had been set from
4 there and be available to Ian and anyone else
5 that needed me.
6 **Q. You testified earlier that someone**
7 **called Alex Crepeau works for you; is that**
8 **right?**
9 A. That's correct, yes.
10 **Q. Forgive me if I am mispronouncing**
11 **his name. You said that he was responsible for**
12 **client valuation and margin.**
13 A. Correct.
14 **Q. Does he have responsibility for**
15 **margin at the OCC or is that a different**
16 **functional area?**
17 A. Yes, it's a different functional
18 area.
19 **Q. Do you have responsibility --**
20 **withdrawn.**
21 **Did you in your position at Lehman**
22 **in September of 2008, did you have**
23 **responsibility for the OCC?**
24 A. Clearance of trades at the OCC, yes.
25 Treasury were responsible for the margin,
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1 Blackwell - Highly Confidential
2 pledging margin to -- all of the exchange
3 margin, so the names mentioned here, Craig
4 Jones, Dan Fleming. I believe you are speaking
5 to Dan at some point.
6 **Q. Mr. Fleming has operational**
7 **responsibility for or had, rather, operational**
8 **responsibility for the margin at OCC during the**
9 **month of September '08?**
10 A. Correct.
11 **Q. Did he report to Mr. Jones or did**
12 **Mr. Jones report to him?**
13 A. Mr. Jones reported to Dan Fleming.
14 **Q. Are both of those individuals still**
15 **at Barclays?**
16 A. They are.
17 **Q. Do you know why the other Lehman**
18 **individuals would be copied on an e-mail about**
19 **this subject? Did they also have**
20 **responsibility for this area?**
21 A. I don't. There seem to be
22 regulatory people, regulatory finance people on
23 here, so I don't know what -- reading through
24 the e-mail trail, I don't know what the
25 ultimate genesis of this trail of work is.
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1 **Blackwell - Highly Confidential**
2 A. List of securities that were
3 unencumbered in the clearance box of Lehman
4 Brothers.
5 **Q. As of which date?**
6 A. I don't know the date. I'm not
7 going to say what date it was, but the schedule
8 being created over that weekend is my
9 understanding.
10 **Q. This might be a slightly vague**
11 **question. It's not intended to be in any way**
12 **tricky. I am just trying to get a sense of**
13 **whether you think this is in some way the**
14 **product of the work that your team did over the**
15 **weekend to identify unencumbered assets. Is**
16 **that a fair reading of the situation?**
17 A. I'm aware of a Schedule B that we
18 contributed to, so I'm assuming based on the
19 title of the document, but without a number to
20 compare it, it's difficult for me to --
21 **Q. It is in alphabetical order, but I**
22 **take your point.**
23 MR. SHAW: I will note that on
24 page 1, Schedule B6, which I think is what
25 you are looking at, has a title by it
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1 Blackwell - Highly Confidential
2 **Q. Which are the regulatory finance**
3 **people?**
4 A. Peter Tennison and Tony Stucchio,
5 and then there are product controllers in Frank
6 Pearn and Gerry Reilly.
7 **Q. Thank you. That's all I have for**
8 **that document.**
9 Can you have in front of you, it's
10 one of the big fat ones that Mr. Hine marked,
11 85 B. Can you open the page to the last
12 document in here which starts at Bates range
13 4607 and it's entitled at the top Exhibit B6
14 Source Schedule B Final, Schedule B. Do you
15 see that?
16 A. I do.
17 **Q. Do you recognize this document or**
18 **know what it is?**
19 A. I believe I know what it is.
20 **Q. Can you tell me what it is, please.**
21 A. I believe this is the unencumbered
22 collateral list.
23 **Q. When you say "the unencumbered**
24 **collateral list," can you be a little more**
25 **specific, please?**
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1 Blackwell - Highly Confidential
2 saying Monday Transfers Par Amount.
3 A. Right. So it's only one component
4 of Schedule B.
5 MR. OXFORD: Which page?
6 MR. SHAW: Third page of the
7 document after the first blue page. You
8 see there is F/N and exhibit.
9 MR. OXFORD: Yeah, I don't think
10 that's got anything to do with that. Okay.
11 A. So this document equals that 2.6
12 number?
13 **Q. Is that your understanding?**
14 A. Well, that's -- I don't know how
15 this is laid out, so I think that's a fair
16 point.
17 **Q. In compiling your list of**
18 **unencumbered assets, which may not be exactly**
19 **what is at Bates range 4607 and following, did**
20 **you or your team undertake any effort to take**
21 **out securities that were owned by Lehman's**
22 **customers?**
23 MR. SHAW: Objection. Vague as to
24 time.
25 **Q. At any point over the weekend when**
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1 **Blackwell - Highly Confidential**
2 **you were combining a list of unencumbered**
3 **assets that informs this Schedule B that we are**
4 **looking at, did you or your team undertake any**
5 **efforts to deduct from that list of CUSIPs any**
6 **CUSIPs that were owned by Lehman customers?**
7 MR. SHAW: Objection to form.
8 You can answer.
9 A. Of course. Unencumbered assets by
10 definition are not customer assets, however, we
11 had data within the -- we had data challenges,
12 so some of the accuracy of the data was
13 challenging. We applied a rationale, as I
14 described before, around memo seg and memo to
15 just take firm inventory, we excluded customer
16 inventory and were -- we applied a methodology
17 absolutely with the intent of protecting
18 customer assets all the way through the
19 process.
20 **Q. Have you ever done any analysis to**
21 **determine whether or not any customer assets**
22 **ended up on Schedule B?**
23 A. I think there were some analysis,
24 that's possible. I can't -- there was
25 definitely analysis on Schedule B and
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1 **Blackwell - Highly Confidential**
2 **LBI positions.**
3 **Q. Why do you use the date of 9/31?**
4 A. I don't use the date. It's an
5 account identifier. 931 is an account range.
6 **Q. I understand.**
7 A. So it's a distinct account range
8 that we analyze, firm inventory accounts.
9 **Q. Is it possible that Lehman's system**
10 **showed that multiple parties, including**
11 **customers of Lehman and Lehman itself, could**
12 **have entitlement to the same security in the**
13 **clearance box?**
14 A. Yes, but there was a methodology
15 applied to identify that.
16 **Q. What was that methodology?**
17 A. Again, using 931 accounts, taking
18 the difference between the value of the
19 customer -- taking a total value of the
20 position in the box, taking only the component
21 which was a -- taking only the component that
22 was the trading book component, and if that
23 trading book component was bigger than the
24 total position, then there was an adjustment
25 there as well, so absolutely we are taking the
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1 **Blackwell - Highly Confidential**
2 refinement of it, and it's possible, but I
3 think if that happened, then there was a
4 correction that took place.
5 **Q. And who did that analysis?**
6 A. I would imagine it's going to be the
7 finance team and Jim Hraska in conjunction
8 maybe with the regulatory ops team.
9 **Q. Were you involved in that analysis?**
10 A. Not doing the analysis. I think I
11 have seen analysis over the months post
12 bankruptcy.
13 **Q. Were you involved in reviewing the**
14 **analysis that was done by others?**
15 A. It's possible. I can't confirm that
16 a hundred percent, but it's possible I reviewed
17 analysis. There was no intent to move customer
18 assets.
19 **Q. When you say there was no intent to**
20 **move customer assets, do you include in your**
21 **definition of customers Lehman affiliates?**
22 A. I include the way these schedules
23 were created or the way that the unencumbered
24 assets were created was using 931 inventory
25 accounts, which are firm positions, firm being
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1 **Blackwell - Highly Confidential**
2 most conservative component and if there was
3 any doubt in terms of total position and if the
4 position in the box was less than the -- was
5 less than the -- less than or equal to the
6 customer position, we left that position there.
7 So we didn't -- there was a methodology for
8 each of the schedules that absolutely was
9 designed to protect the customer assets.
10 **Q. So I understand this, if, for**
11 **example, there were a million shares of IBM and**
12 **Lehman's books and records showed that there**
13 **was an entitlement to those million shares by a**
14 **customer and by Lehman, those under your**
15 **methodology would have been excluded from your**
16 **list of unencumbered assets?**
17 A. Yes. That was the intent.
18 **Q. Does the same apply to securities**
19 **that Lehman's books and records show an**
20 **entitlement to by not only Lehman, by which I**
21 **mean LBI, the broker/dealer, but also a Lehman**
22 **affiliate?**
23 A. Jim would be a better person to
24 explain exactly how he applied the methodology,
25 but there was deliberate methodology applied to
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1 Blackwell - Highly Confidential
2 each one of the schedules.
3 **Q. Do you have any understanding that**
4 **on Schedule B that's attached to the APA a**
5 **number of the securities that were included in**
6 **the repo transaction and also on Schedule A to**
7 **the -- withdrawn.**
8 **Do you have any understanding that**
9 **Schedule B to the Clarification Letter includes**
10 **repo securities that are also on Schedule A to**
11 **the Clarification Letter?**
12 A. I didn't.
13 **Q. Do you have any reason to believe**
14 **that they should be on there?**
15 A. I don't have a view.
16 **Q. Did you follow up with**
17 **Mr. Macchiaroli after your meeting with him in**
18 **late September, early October 2008 about the**
19 **15C3 account?**
20 MR. SHAW: Asked and answered.
21 A. Yes, many times.
22 **Q. Did you follow up with him on the**
23 **question of your request that he authorize the**
24 **release of moneys from -- specifically**
25 **\$769 million of securities from Lehman's 15C3?**
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1 Blackwell - Highly Confidential
2 **the repos?**
3 A. Under normal course of business,
4 that's correct, yes, they did. There are some
5 exceptions, but yes.
6 **Q. Were there any exceptions in the**
7 **week of September 15th, 2008?**
8 A. Not in the -- not that I'm aware of,
9 no.
10 **Q. Okay. Typically, in your**
11 **experience, when does the clearing bank inform**
12 **Lehman of the value it's assigning to the**
13 **collateral?**
14 A. I think that's part of the process
15 of closing the tri-party agreement in any one
16 day, so I don't know exactly what time, but
17 once the tri-party is closed down or tri-party
18 is set, we would understand what the value was.
19 I don't know when that is in the normal course
20 of business.
21 **Q. After the clearing bank assigns the**
22 **value and sets the securities that are going to**
23 **be transferred, does the buyer under a repo**
24 **have the discretion to refuse delivery of any**
25 **securities?**
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1 Blackwell - Highly Confidential
2 A. I don't think I did.
3 MR. SHAW: Asked and answered.
4 MR. OXFORD: I don't think I have
5 anything further at this time.
6 EXAMINATION BY
7 MR. DAKIS:
8 **Q. I think we met earlier off the**
9 **record. My name is Robert Dakis. I am from**
10 **the law firm of Quinn Emanuel Urquhart Oliver &**
11 **Hedges and I represent the Unsecured Creditors**
12 **Committee of Lehman Brothers Holdings, Inc.**
13 **I want to go back to the discussion**
14 **of collateral posted for the Fed and the**
15 **tri-party repos. Just a couple of things I**
16 **want to make sure that I understood from your**
17 **prior testimony about them.**
18 **Now, I believe you explained the**
19 **process was the clearing bank, either JPMorgan**
20 **Chase or Bank of New York depending on where we**
21 **were, would value the collateral that's posted**
22 **under the repurchase agreements.**
23 A. Yes.
24 **Q. Okay. And the clearance bank then**
25 **selected the collateral that's pledged under**
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1 Blackwell - Highly Confidential
2 MR. SHAW: Objection. Foundation.
3 A. I don't know. On what basis? If it
4 falls outside of the agreed schedules.
5 **Q. Let me try to make it a little more**
6 **clear so that we can create some foundation for**
7 **this.**
8 **You understand that a repurchase**
9 **agreement typically has a buyer who buys**
10 **securities for some short-term subject to an**
11 **obligation to sell them back to the seller at**
12 **the maturity date of the repurchase agreement;**
13 **correct?**
14 A. I understand what a repo is.
15 **Q. Just trying to set it up for the**
16 **record.**
17 **The entity who buys under the**
18 **repurchase agreement typically sets a schedule**
19 **or at least under these repurchase agreements**
20 **it's your understanding that the buyer sets a**
21 **schedule of specific categories of securities**
22 **that it will accept.**
23 A. There are schedules attached to the
24 repo agreement that says these are the types of
25 collateral that are eligible for this
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1 Blackwell - Highly Confidential
2 agreement, yes.
3 **Q. In your experience, does the buyer**
4 **under these repurchase agreements have**
5 **discretion to refuse delivery of a security**
6 **that falls within those schedules?**
7 MR. SHAW: Objection to form.
8 A. I'm not aware.
9 MR. DAKIS: I am going to show you
10 an exhibit.
11 (Exhibit 96 B, e-mail dated
12 September 18, 2008, Bates stamped 77882,
13 marked for identification.)
14 **Q. I believe you have been handed a**
15 **document that's been marked as Exhibit 96.**
16 **This is an e-mail chain. The top e-mail in the**
17 **chain is an e-mail from you to Ian Lowitt dated**
18 **Thursday, September 18th at 8:56 p.m. GMT. In**
19 **the lower right-hand corner is a Bates number**
20 **77882.**
21 **Did I accurately describe that?**
22 A. 77882, yes.
23 **Q. I want to focus on in the fourth**
24 **e-mail in the chain, which is an e-mail from**
25 **Ian Lowitt to you on Thursday, September 18th,**
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1 Blackwell - Highly Confidential
2 process of settling the Fed repo out to BONY, a
3 discussion was had at I think it was probably
4 about 2 in the morning, I think it was e-mails,
5 where the Barclays repo was not being rolled.
6 We thought it would be. And a HIC loan, I
7 think, was put on that -- held-in-custody loan
8 for \$15 billion, and at that time I -- when Jim
9 informed me of that, I tried to contact a
10 number of people at Barclays, Harry Harrison,
11 Gerard LaRocco, I think I tried to get ahold of
12 Ian and Paolo and I don't think I had any luck
13 in getting contact with anyone to tell them
14 that it happened, so the following day we
15 started the day with a -- I think there was
16 this HIC loan for 15.8 billion.
17 **Q. You said that there was a discussion**
18 **at about 2 in the morning about the Barclays**
19 **repo not rolling.**
20 A. Yes. At that point.
21 **Q. Who was on that discussion?**
22 A. When I say discussion, it was Jim
23 Hraska probably coming down to tell me or vice
24 versa. I can't recall exactly how. Or Monty.
25 **Q. And by "Monty" you mean?**
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1 Blackwell - Highly Confidential
2 **Ian asks you "are we still papering the 18**
3 **billion repo with Barclays or is that all part**
4 **of the same transfer."**
5 **Did you understand at the time what**
6 **Mr. Lowitt meant by that?**
7 A. Sorry, where are you looking at?
8 Oh, here. What I understood was that there was
9 a -- away from the Fed repo in the days
10 preceding I guess -- in the week between LBHI
11 and LBI's bankruptcy Barclays were extending
12 some -- were financing the organization through
13 some -- through a repo arrangement and that had
14 been rolled for the previous two nights, so
15 yes, my understanding was at that point it was
16 possible that that would get rolled again for
17 another night.
18 **Q. And just to be sure that I am clear,**
19 **this is a separate repo from the Fed repo?**
20 A. Absolutely, yes, it's a Barclays --
21 Barclays to Lehman repo directly.
22 **Q. Okay. And is it your understanding**
23 **that that repo rolled again on the night of the**
24 **18th?**
25 A. It didn't. At the end of the
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1 Blackwell - Highly Confidential
2 A. Forrest.
3 **Q. And do you know who at Barclays made**
4 **the decision not to roll the repo?**
5 A. No.
6 **Q. Now, could you explain the HIC loan**
7 **to me. What was the purpose of the HIC loan?**
8 A. A HIC loan is a held-in-custody
9 loan, so it's a loan against the collateral in
10 the Lehman box.
11 **Q. Who provided the loan?**
12 A. Chase. JPMorgan Chase. I don't
13 believe the repo -- that the held in custody
14 was for the full value of what was in the box.
15 **Q. And I believe you testified earlier**
16 **that you were in a room with a bunch of Weil**
17 **lawyers at some point before the repo rolled**
18 **when you learned that the repo wasn't going to**
19 **roll. You said that it was reasonable that it**
20 **didn't roll?**
21 MR. SHAW: Objection.
22 Mischaracterizes prior testimony.
23 A. Yes, the timing is wrong there.
24 MR. DAKIS: Could we take a
25 two-minute break while I find it on
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1 Blackwell - Highly Confidential
2 Livenote so I can pull up the right
3 testimony.
4 MR. SHAW: Sure.
5 (Recess was taken from 4:19 to
6 4:20.)
7 BY MR. DAKIS:
8 Q. Okay. Going back to my prior
9 question, you testified earlier in the day that
10 at some point you were in the room with Weil,
11 Ian and Paolo were outside --
12 MR. DAKIS: Can you read it.
13 (Record read.)
14 Q. Does that refresh your recollection
15 of your prior testimony?
16 A. Yes.
17 Q. Okay. Why did you think at the time
18 that it was reasonable Barclays wouldn't take
19 the loan?
20 A. Because repos roll generally and
21 this repo was rolled over a 24-hour period.
22 At 2 in the morning there is no economic
23 outcome either way for any of the organizations
24 involved. A HIC loan unwinds instantly in the
25 morning. So if Barclays had taken a trade,
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1 Blackwell - Highly Confidential
2 A. I wouldn't know without looking at
3 the assets. I wouldn't know even looking at
4 the assets, frankly.
5 Q. Fair enough. Could you just explain
6 what you mean by a value is system driven?
7 A. What I was referring to was that the
8 systems would have had close of business Friday
9 prices in or whatever close of business price
10 had been fed in. When I say system driven, I
11 mean that's been sourced from a pricing venue,
12 so Bloomberg or Reuters, some other price feed
13 that the firm purchased.
14 Q. Was there anyone at Lehman that was
15 responsible for ensuring that the systems were
16 updated regularly?
17 A. Absolutely. It was a continuous
18 process every day and to manage stale pricing.
19 Q. Who was the key person responsible
20 for this process?
21 A. The systemic prices, to make sure
22 there was a price being fed in, that was done
23 by operations, by Alex Crepeau.
24 Q. And you had said that it's a
25 possibility that these values were model
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1 Blackwell - Highly Confidential
2 they would have delivered cash and got cash
3 straight back, so net net, nobody gained or was
4 harmed, so in effect the HIC loan was there to
5 protect Chase and put a back value entry into
6 their books to give their credit department
7 comfort. That would be my opinion.
8 Q. Do you know how the Fed valued
9 collateral that was pledged to the Fed wire?
10 A. I don't know how they did it. I
11 don't know what mechanism they used.
12 Q. Can you please put Exhibit 85 B in
13 front of the witness again. It's one of those
14 large books.
15 A. I have it.
16 Q. Just a couple more questions. We
17 are almost done.
18 I believe when we were talking -- if
19 you could turn to page 4398. It's, I believe,
20 the third page.
21 We were talking about the values on
22 this first page earlier and I believe your
23 testimony was that the values were either
24 system driven or model driven and you didn't
25 know which. Is that correct?
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1 Blackwell - Highly Confidential
2 driven. Could you explain what you meant by
3 "model driven"?
4 A. I'm not sure if they are included in
5 this list, but model-driven prices would be
6 that a trader or a comp team would create a
7 model. That model then -- or apply a model, an
8 existing model, to a product that prices it
9 based on a series of inputs.
10 Q. And who at Lehman was responsible
11 for the models?
12 A. In terms of testing the models, it
13 would be finance that would test the models, or
14 product controllers.
15 Q. Who would be in charge of the
16 product controllers or finance?
17 A. At the time I think it was Gerry
18 Reilly.
19 Q. If you could please turn to the page
20 that starts 4402. At the top it says
21 Exhibit A-1, Source Barclays Financing
22 Collateral List, Barcops 9-20-2008, Fed
23 Settled.
24 A. Yes.
25 Q. Can you tell what this is a schedule
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1 **Blackwell - Highly Confidential**
2 **of based on the document or based on the actual**
3 **title?**
4 A. Not really, no.
5 **Q. Could you now turn to page 4607. I**
6 **know one of my colleagues spent a fair amount**
7 **of time on this, so I am not going to belabor**
8 **the point. I just want to ask one or two more**
9 **follow-up questions.**
10 A. 46- --
11 **Q. -07. It's in front of the last blue**
12 **sheet. Behind the last blue sheet. Sorry.**
13 A. Schedule B.
14 **Q. Now, this says it's Schedule B**
15 **Final. Would you be able to -- strike that.**
16 **Earlier in the day I think you**
17 **testified that Barclays didn't receive all of**
18 **the collateral it had bargained for under the**
19 **APA and the revised APA; correct?**
20 A. Correct.
21 **Q. Would you be able to point where on**
22 **Schedule B, which securities it didn't receive?**
23 A. Absolutely not.
24 **Q. Okay. Would you be able to tell us**
25 **which categories it didn't receive?**
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1 **Blackwell - Highly Confidential**
2 A. I wouldn't without being able to run
3 reports in to produce it.
4 **Q. Let me ask you the same question.**
5 **If I were to put Schedule A in front of you,**
6 **would you be able to point out which securities**
7 **on Schedule A Barclays didn't receive?**
8 A. No, not without a certain comparison
9 document.
10 MR. DAKIS: I have nothing further.
11 (Time noted: 4:27 p.m.)
12
13
14 -----
15 ALASTAIR BLACKWELL
16
17 Subscribed and sworn to before me
18 this day of 2009.
19
20 -----
21
22
23
24
25
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1
2 **C E R T I F I C A T E**
3
4 **STATE OF NEW YORK)**
5 **) ss.:**
6 **COUNTY OF NASSAU)**
7
8 **I, KRISTIN KOCH, a Notary Public**
9 **within and for the State of New York, do**
10 **hereby certify:**
11 **That ALASTAIR BLACKWELL, the witness**
12 **whose deposition is hereinbefore set**
13 **forth, was duly sworn by me and that such**
14 **deposition is a true record of the**
15 **testimony given by such witness.**
16 **I further certify that I am not**
17 **related to any of the parties to this**
18 **action by blood or marriage; and that I am**
19 **in no way interested in the outcome of**
20 **this matter.**
21 **IN WITNESS WHEREOF, I have hereunto**
22 **set my hand this 7th day August, 2009.**
23
24 **KRISTIN KOCH, RPR, RMR, CRR, CLR**
25
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6 MR. OXFORD 190
7 MR. DAKIS 255
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15 BCI-EX-00077293..... 22 19
16 Exhibit 56 B
17 E-mail dated May 29, 2009, Bates
18 stamped 10295594, with attached
19 fax, Bates stamped 10300652..... 46 16
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21 Exhibit 57 B
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23 Exhibit 58 B
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7	Bates stamped 10294630..... 97 10
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7	Bates stamped BCI-EX-(S)-00004396
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1
2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name: In re: Lehman Brothers

Dep. Date: August 7, 2009

4 Deponent: Alastair Blackwell

5 CORRECTIONS:

6 Pg. Ln. Now Reads Should Read Reason

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 _____

16 _____

17 _____

18 _____

19 _____

20 _____
Signature of Deponent

21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS ____ DAY OF _____, 2009.

23 _____

24 _____

25 (Notary Public) MY COMMISSION EXPIRES: _____

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